

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804  
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: *(Pages 2403 - 2700)*  
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:   
: *October 18, 2021*  
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR  
United States District Court  
801 West Superior Avenue  
Court Reporters 7-189  
Cleveland, Ohio 44113  
216.357.7019

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1 APPEARANCES:

2 For the Plaintiffs:

Peter H. Weinberger, Esq.  
SPANGENBERG, SHIBLEY & LIBER  
1001 Lakeside Avenue, Ste. 1700  
1900 East Ninth Street  
Cleveland, Ohio 44114  
216-696-3232

5

W. Mark Lanier, Esq.  
Rachel Lanier, Esq.  
THE LANIER LAW FIRM  
6810 FM 1960 West  
Houston, Texas 77069  
813-659-5200

6

7

8

9

10

11

12

Frank L. Gallucci, III, Esq.  
PLEVIN & GALLUCCI COMPANY, LPA  
The Illuminating Building  
Suite 2222  
55 Public Square  
Cleveland, Ohio 44113  
216-861-0804

13

14

15

16

17

18 For Walgreen Defendants:

Kaspar J. Stoffelmayr, Esq.  
Brian C. Swanson, Esq.  
BARTLIT BECK LLP  
54 West Hubbard Street, Ste.300  
Chicago, Illinois 60654  
312-494-4400

19

20

21

22

23

24

25

1 APPEARANCES (Cont'd):

2 For CVS Defendants: Eric R. Delinsky, Esq.  
3 Alexandra W. Miller, Esq.  
4 ZUCKERMAN SPAEDER - WASHINGTON  
5 Suite 1000  
6 1800 M Street, NW  
7 Washington, DC 20036  
8 202-778-1831

6 For HBC/Giant Eagle Defendants: Diane P. Sullivan, Esq.  
7 Chantale Fiebig, Esq.  
8 WEIL GOTSHAL & MANGES  
9 Suite 600  
10 2001 M Street NW  
11 Washington, DC 20036  
12 202-682-7200

10 For Walmart Defendants: John M. Majoras, Esq.  
11 JONES DAY - COLUMBUS  
12 Suite 600  
13 325 John H. McConnell Blvd.  
14 Columbus, Ohio 43215  
15 614-281-3835

14 Tara A. Fumerton, Esq.  
15 Tina M. Tabacchi, Esq.  
16 JONES DAY - CHICAGO  
17 Suite 3500  
18 77 West Wacker  
19 Chicago, Illinois 60601  
20 312-782-3939

18 ALSO PRESENT: David Cohen, Special Master

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08:48:16 1 M O R N I N G S E S S I O N

08:50:04 2 (In open court at 8:49 a.m.)

08:50:04 3 THE COURT: All right. First, is there any  
08:50:07 4 reason that plaintiffs' motion for sanctions against Walmart  
08:50:10 5 should be filed under seal?

08:50:13 6 I don't see any. I thought I would take that up  
08:50:16 7 first.

08:50:20 8 MS. FUMERTON: So, Your Honor, they quote  
08:50:22 9 extensively from medical documents providing doctors and  
08:50:25 10 other names. We're assessing right now what confidentiality  
08:50:29 11 obstacle allegations we have to other parties with respect  
08:50:31 12 to this, and given the names that are in there.

08:50:34 13 I also need to check to the extent to which there  
08:50:37 14 might be information in the attached documents. We didn't  
08:50:39 15 get this till midnight last night.

08:50:41 16 THE COURT: Well, the presumption is  
08:50:42 17 everything's public. These documents if they were  
08:50:48 18 introduced at trial, they'd be public.

08:50:54 19 MR. WEINBERGER: Your Honor, I would note  
08:50:55 20 that --

08:50:55 21 THE COURT: If they don't reveal patient  
08:51:00 22 information, I don't --

08:51:00 23 MR. WEINBERGER: Yes, that's been redacted  
08:51:03 24 from the number of documents that mention patient names.

08:51:06 25 MS. FUMERTON: I don't think that PHI is the

08:51:08 1 only reason we can keep things as confidential. As I said,  
08:51:11 2 we got this at midnight. Likely, the bottom of the brief is  
08:51:14 3 not something we're going to have an objection to, but the  
08:51:17 4 attached documents, if they're intending to include those in  
08:51:20 5 what they file might --

08:51:21 6 THE COURT: All right, look, I'm -- the motion  
08:51:28 7 can be filed publicly. I'll wait until noon to deal with  
08:51:32 8 the attachments, so at the moment keep the attachments under  
08:51:37 9 seal. The motion can be filed publicly.

08:51:46 10 How I deal with it, I'm not sure. I think I'll hear  
08:51:53 11 briefly from Walmart at noon.

08:51:57 12 But where -- Mr. Nelson is a former employee; is that  
08:52:01 13 right?

08:52:03 14 MR. MAJORAS: Yes, sir, he's retired.

08:52:04 15 THE COURT: Where does he live, Mr. Majoras?

08:52:07 16 MR. MAJORAS: As I said, somewhere in  
08:52:09 17 Arkansas. I don't know exactly where, Your Honor.

08:52:13 18 THE COURT: I think right now you better have  
08:52:14 19 someone contact him and his lawyer. I expect he'll be here  
08:52:19 20 this week, and you'll probably need to arrange to have him  
08:52:21 21 brought here on Walmart's private jet. That will get around  
08:52:27 22 the hundred-mile limit, so I expect he'll be here in person  
08:52:31 23 for testimony.

08:52:33 24 MR. MAJORAS: Your Honor, for the record, we  
08:52:34 25 object to this. He has counsel. His counsel will

08:52:37 1 presumably respond.

08:52:38 2 THE COURT: You can object all you want.

08:52:39 3 That's an order. Okay? So start making the arrangements.

08:52:45 4 I'll deal with this one step at a time. My hope is not to

08:52:49 5 have to consider draconian sanctions. And it's clear that

08:52:55 6 the Court's supposed to before imposing sanctions see if I

08:53:00 7 can remedy whatever harm through ordinary means, and the

08:53:05 8 most logical one is to have Mr. Nelson testify so he can be

08:53:09 9 examined on these documents. And if I determine that that's

08:53:12 10 sufficient, well, then that's sufficient. But he's got to

08:53:15 11 be here.

08:53:16 12 I don't -- so start making arrangements to have him

08:53:19 13 here. Whenever he's here, we'll put him in. I assume we

08:53:24 14 can have him on and off in a day. So I'll deal with that at

08:53:27 15 noon, but you should start making the arrangements.

08:53:31 16 MR. MAJORAS: Your Honor, we would like an

08:53:32 17 opportunity to respond to the motion. Again, I read that

08:53:35 18 this morning.

08:53:36 19 THE COURT: I'll deal with it at noon. I'm

08:53:39 20 just saying, Mr. Majoras, because that's my intent is to

08:53:42 21 have him testify, okay? So start making the arrangements.

08:53:47 22 Walmart's a big company. They can get anyone anywhere in

08:53:51 23 prompt order, so I think that's the way to do it. And I

08:53:54 24 think it's better to have him testify live than live by

08:53:57 25 video under the circumstances.

08:54:02 1 And if the testimony, the examination with the  
08:54:05 2 documents I think is sufficient, then that's what we'll do.  
08:54:09 3 I won't have to consider anything else. And that's my  
08:54:13 4 intent. And I can deal with the time, charge the time  
08:54:17 5 accordingly. That's relatively minor.

08:54:19 6 But I want to keep this trial on track, and I think  
08:54:27 7 that's my first order of business. And if I can do that,  
08:54:30 8 that's what I'll do with all the defendants that we have.

08:54:34 9 MR. MAJORAS: Your Honor, just with respect to  
08:54:35 10 the documents, we will reserve the right to object to those  
08:54:39 11 documents. Quite a few of them are out of scope, unrelated,  
08:54:43 12 and not relevant under rulings we've already had. And I  
08:54:47 13 just want to for the record note that we will make those  
08:54:49 14 objections.

08:54:50 15 THE COURT: You can make the objections  
08:54:51 16 whenever you want, sir. I'll decide if they come in, if  
08:54:58 17 they -- if they gave anything to him on this subject, the  
08:55:04 18 general subject, obviously they come in, or anything he  
08:55:07 19 sent, if they relate to the subject of this trial. If they  
08:55:09 20 don't relate to the subject of the trial, I won't let them  
08:55:14 21 in if they're offered.

08:55:16 22 So I'll deal with this more at noon. I have a  
08:55:20 23 criminal matter, but I don't think it's till 12:30, so I'll  
08:55:25 24 deal with this at -- yeah, my criminal matter is at 12:30,  
08:55:34 25 so I'll take it up at noon.



08:55:37 1 Okay. Anything else we need to take up before we  
08:55:40 2 bring up the jury?

08:55:48 3 Okay. We have an extra five minutes. I don't want to  
08:55:51 4 rush the jurors.

08:57:22 5 Mr. Weinberger, when were the documents that you  
08:57:24 6 referred to in this motion, to your knowledge, when were  
08:57:31 7 they produced? Not the exact day but when were they  
08:57:36 8 produced?

08:57:36 9 MR. WEINBERGER: Sure. It's -- I actually  
08:57:39 10 have each of them with their dates.

08:57:49 11 THE COURT: All right. What's the range?

08:57:50 12 MR. WEINBERGER: It starts in the end of July,  
08:57:51 13 but predominantly, the documents that we cite were produced  
08:57:58 14 in September and as late as October 5.

08:58:06 15 Since July 16, Your Honor, there have been 39 separate  
08:58:13 16 productions. Since we began --

08:58:20 17 THE COURT: Robert, I'm not getting the  
08:58:22 18 realtime.

08:58:35 19 There have been 39 productions since when?

08:58:39 20 MR. WEINBERGER: Since July 16.

08:58:45 21 Since we began jury selection on September 27, there  
08:58:51 22 have been 13 productions. Since we began trial, there have  
08:58:59 23 been six productions. Since July 16, the total productions,  
08:59:09 24 documents, this is not pages, documents, have been 206,739.

08:59:17 25 THE COURT: All right. I just -- I was really

08:59:19 1 interested in the documents you cited.

08:59:23 2 MR. WEINBERGER: Okay.

08:59:24 3 THE COURT: All right. Robert, can you and  
08:59:27 4 Lance before they get the jury out get this set up here?

09:00:11 5 MS. FUMERTON: Your Honor, when you get a  
09:00:12 6 moment, I just want to put some broader context with respect  
09:00:16 7 to the numbers and the motion. And obviously I understand  
09:00:18 8 we'll talk about this more broadly, but of the documents  
09:00:20 9 that they cite that have been produced since trial, it's  
09:00:23 10 only been a handful. Some of them had already been produced  
09:00:26 11 previously, and others are, the substance of them had  
09:00:29 12 already been produced as well.

09:00:30 13 And again, these all come from a motion that  
09:00:34 14 plaintiffs filed at the end of discovery after all the  
09:00:37 15 depositions had taken place and which then we were ordered  
09:00:40 16 to produce nationwide discovery from --

09:00:44 17 THE COURT: That is why I'm trying to deal  
09:00:46 18 with this step by step, and I'm hopeful that this can be  
09:00:49 19 remedied by having Mr. Nelson testify. He can be examined  
09:00:52 20 on these documents. And that's what I'm going to try to  
09:00:56 21 accomplish. And if I can't, then I don't have to consider  
09:00:59 22 anything else.

09:01:01 23 MS. FUMERTON: And just to bring perspective,  
09:01:04 24 Mr. Nelson was responsible for 17 different states, and so  
09:01:08 25 that's why all those Ohio-related documents have been

09:01:10 1 produced prior to this point in time, including many of the  
09:01:14 2 other ones. In fact, we're about to hear Mr. Nelson's  
09:01:17 3 deposition testimony, and you'll see that he's been examined  
09:01:19 4 almost exclusively on issues outside of Ohio and  
09:01:22 5 specifically in Texas.

09:01:23 6 THE COURT: Well, that's fine --

09:01:25 7 MS. FUMERTON: Plaintiffs are trying to try  
09:01:27 8 this case outside of Ohio.

09:01:27 9 THE COURT: Walmart is a national company and  
09:01:30 10 has national policies.

09:01:31 11 MS. FUMERTON: Your Honor, these aren't about  
09:01:32 12 the national policies. The policies they've had extensive  
09:01:35 13 discovery on.

09:01:37 14 THE COURT: I've made my rulings,  
09:01:39 15 Ms. Fumerton, and I want you to start having someone getting  
09:01:42 16 ahold of this gentleman and making arrangements, because I  
09:01:44 17 expect he's going to be here, all right? And if he's not,  
09:01:47 18 then I may have to consider something a lot more draconian.  
09:01:51 19 I don't want to do that. Is that clear?

09:01:53 20 MS. FUMERTON: Your Honor --

09:01:54 21 THE COURT: You want to test me, test me.  
09:02:02 22 Okay.

09:04:47 23 (Jury present in open court at 9:04 a.m.)

09:05:15 24 THE COURT: Good morning. Please be seated.  
09:05:17 25 I hope everyone had a good weekend.

09:05:19 1 All right. Mr. Lanier, Mr. Weinberger, you may call  
09:05:24 2 your next witness, please.

09:05:26 3 MR. LANIER: Thank you, Your Honor. Good  
09:05:28 4 morning. May it please the Court.

09:05:29 5 Good morning, ladies and gentlemen. At the risk of  
09:05:35 6 glares from Your Honor from others, today is a deposition  
09:05:39 7 day. And so we begin with the deposition of Brad Nelson.  
09:05:42 8 He's a former employee of Walmart. He is the senior manager  
09:05:47 9 for Controlled Substances. And he'll say that in his  
09:05:50 10 deposition.

09:05:55 11 But this, Your Honor, is a 3 hour and 55 minute play  
09:05:59 12 if you add both plaintiff and defense together.

09:06:01 13 And so we call by deposition, video deposition, Brad  
09:06:05 14 Nelson.

09:06:13 15 VIDEO TECHNICIAN: Today's date is Tuesday,  
09:06:15 16 March 23, 2021, and the approximate time is 9:04 a.m.

09:06:20 17 Our deponent is Brad Nelson.

09:06:23 18 (Witness sworn.)

09:06:23 19 DEPOSITION TESTIMONY OF BRAD NELSON

09:06:30 20 **Q** My name is Mark Lanier, and I'm going to be asking the  
09:06:33 21 questions on behalf of the plaintiffs today, okay?

09:06:37 22 **A** Yes.

09:06:37 23 **Q** You and I have never met before, have we?

09:06:39 24 **A** Not that I'm aware of.

09:06:41 25 **Q** All right. Well, I've had a chance to read about you

09:06:45 1 and read through a number of different documents in your  
09:06:47 2 file, and I've got a number of different things to talk to  
09:06:53 3 you about today. But what I've done is to give you and the  
09:06:56 4 jury some direction, I've kind of put together a road map to  
09:06:59 5 show what areas we're going to cover.

09:07:01 6 Are you able to see that okay?

09:07:03 7 **A** Yes, sir.

09:07:04 8 **Q** Great. The first thing we'll do of any import is  
09:07:09 9 we're going to, aside from talk about you, we're going to  
09:07:12 10 stop and talk about the requirements that are associated  
09:07:16 11 with controlled substances and opioid distribution on a  
09:07:21 12 pharmacy level.

09:07:24 13 You tracking with me?

09:07:26 14 **A** Yes, sir.

09:07:26 15 **Q** And then we're going to talk about what I consider to  
09:07:30 16 be failures by Walmart. I know you may take issue with  
09:07:33 17 that, but we will discuss at least the issue of failures  
09:07:36 18 next. Okay?

09:07:38 19 **A** Yes, sir.

09:07:38 20 **Q** And then one final thing I want to talk to you about  
09:07:43 21 is I really want to focus in on the motives behind some of  
09:07:49 22 what Walmart did and I'll talk to you about as well. Okay?

09:07:54 23 **A** Okay.

09:07:54 24 **Q** So before we do that, we need to understand you a  
09:07:56 25 little more fully, so I've got a sheet just for you.

09:07:59 1 This is Brad Nelson.

09:08:02 2 Now, is it fair for us to say that your professional  
09:08:06 3 life has basically centered around Walmart?

09:08:14 4 **A** I'm not sure I understand your question, sir.

09:08:16 5 **Q** Well, you worked for Walmart from 19, what, 92 through  
09:08:33 6 2017, early 2017, right?

09:08:37 7 **A** That is incorrect, sir. I worked for Walmart from  
09:08:40 8 1983 until March of 2017.

09:08:44 9 **Q** Wow. Even longer than I thought. Okay.  
09:08:50 10 1983 through 2017. That's most of your professional  
09:08:57 11 life, isn't it?

09:08:59 12 **A** That's who I worked for, yes, sir.

09:09:02 13 **Q** Yeah. So when I say your professional life centered  
09:09:04 14 around Walmart, you worked for them for how long?

09:09:14 15 **A** Approximately 32 years.

09:09:22 16 **Q** Yeah. So centered on Walmart.

09:09:24 17 All right. Now, in that time -- I wasn't able to get  
09:09:29 18 all of your personnel files, but it looked to me that just  
09:09:34 19 from 1992 to 2017 you made somewhere, if you count all your  
09:09:45 20 stock options and things like that, somewhere around 8 --  
09:09:48 21 well, north of \$8 million.

09:09:52 22 **A** Sir, I have no idea. I didn't track it that way. I  
09:09:55 23 have no idea what my income was at that time.

09:09:57 24 **Q** Okay. Well, there is a source document that is  
09:10:00 25 Walmart 545, if you want to look at it. And I've got it

09:10:06 1 summarized, and I'll put a summary up here for us to look  
09:10:09 2 at. And I'll represent that these are based upon -- these  
09:10:12 3 are plaintiffs' prepared summaries of the Excel spreadsheet  
09:10:20 4 that is Plaintiffs' Walmart 500.

09:10:22 5 Now, if you've got these three in front of you, sir,  
09:10:28 6 you will see that one page is entitled Brad Nelson salary  
09:10:31 7 history, and it shows your salary going back to 1992, going  
09:10:37 8 up through 2016.

09:10:39 9 Do you see that?

09:10:41 10 **A** Yes, I see a list on the summary, yes.

09:10:43 11 **Q** All right. Does that seem fairly consistent with your  
09:10:46 12 memory of the way your salary changed over the years at  
09:10:52 13 Walmart?

09:10:52 14 **A** Sir, I have no idea. I did not track my salary in  
09:10:57 15 that manner.

09:10:57 16 **Q** And other earnings? Because in addition to your  
09:11:01 17 salary, you got other things paid to you, didn't you?

09:11:05 18 **A** I was paid things according to my compensation  
09:11:08 19 program, sir.

09:11:08 20 **Q** Your compensation program included incentive pay,  
09:11:12 21 didn't it?

09:11:12 22 **A** As well as investments for myself.

09:11:15 23 **Q** Is that a "yes" answer on incentive pay?

09:11:20 24 **A** Incentives were paid by the company as a result of the  
09:11:23 25 company's performance, yes.

09:11:26 1 Q Yeah. Yours was called I think a management  
09:11:30 2 incentive, right?

09:11:31 3 A I don't recall the name of the incentive program.

09:11:33 4 Q And you got stock options, didn't you?

09:11:35 5 A Stock options were part of the incentive program.

09:11:40 6 Q And if the plaintiffs tally all of your earnings, your  
09:11:49 7 stock options, your regular earnings, and come to a  
09:11:53 8 conclusion that just over the 15 years, the last 15 years  
09:11:58 9 you were there, you made over 8 1/2 million dollars, you  
09:12:04 10 don't have any reason to fuss that, do you?

09:12:05 11 A Sir, I have no idea if these numbers are accurate.

09:12:09 12 Q I want to talk to you not about your entire  
09:12:12 13 professional life, per se, at Walmart, but I want to talk to  
09:12:15 14 you in particular about three different time periods related  
09:12:17 15 to what I'm going to call "the job."

09:12:24 16 Now, the job that I'm referencing when I say that is  
09:12:28 17 the job you took in 1990 -- in 2012.

09:12:33 18 Do you remember that?

09:12:35 19 A I don't know which job you're referring to in 2012,  
09:12:41 20 sir.

09:12:42 21 Q All right. You should have Plaintiffs' Walmart 264,  
09:12:50 22 which is a job application we pulled out of your personnel  
09:12:55 23 file.

09:12:57 24 Do you see this is an application for a job you put in  
09:13:01 25 in 2010?



09:13:03 1 **A** I see an e-mail subject that says "Application for job  
09:13:06 2 36156" from August 13 of 2010.

09:13:13 3 **Q** All right, sir. In regards to this, you were applying  
09:13:17 4 for a job, as you noted earlier. The job you were applying  
09:13:21 5 for had a number, 36156, true?

09:13:28 6 **A** That's what's written here, yes, sir.

09:13:30 7 **Q** And that 36156 job, the job title, as you wrote it  
09:13:35 8 down, was senior manager, Professional -- is that Relations?

09:13:43 9 **A** Yes, sir.

09:13:46 10 **Q** And then HW, what does that stand for?

09:13:49 11 **A** Health and Wellness.

09:13:52 12 **Q** All right. Controlled Substance, Regulatory Affairs,  
09:13:58 13 correct?

09:14:00 14 **A** That's what the document says.

09:14:02 15 **Q** All right. So as a senior manager, Substance --  
09:14:10 16 Controlled Substance, Regulatory Affairs, that's the job you  
09:14:17 17 were applying for, right?

09:14:22 18 **A** Yes, sir.

09:14:22 19 **Q** And the job title, there are explanations of what that  
09:14:27 20 job entails.

09:14:31 21 Do you see those?

09:14:32 22 **A** I see the parts that you've highlighted, sir, yes.

09:14:35 23 **Q** So you're applying for a job where the  
09:14:38 24 responsibilities include managing the notifications and  
09:14:44 25 reporting of controlled substance losses to regulatory

09:14:48 1 agencies; is that correct?

09:14:53 2 **A** That's one of the responsibilities, sir.

09:14:57 3 **Q** And another responsibility was to manage the training  
09:15:03 4 and the education for controlled substance distribution,  
09:15:06 5 true?

09:15:10 6 **A** Again, it's what the document says.

09:15:12 7 **Q** And this was a responsibility to identify gaps, to  
09:15:17 8 develop and facilitate training for field management, and to  
09:15:22 9 create resource documents and company intranet postings,  
09:15:25 10 true?

09:15:27 11 **A** Again, that's what the document says.

09:15:28 12 **Q** This job had an additional responsibility to  
09:15:33 13 communicate additional information requested from regulatory  
09:15:38 14 agencies, true?

09:15:39 15 **A** That's what the document says.

09:15:41 16 **Q** And also to drive the company's compliance with  
09:15:47 17 federal and state regulatory requirements related to the  
09:15:51 18 handling, the distribution, the dispensing, and the  
09:15:56 19 destruction of controlled substances, true?

09:15:58 20 **A** That's what the document says.

09:16:01 21 **Q** And the final paragraph under Job Description and  
09:16:08 22 Responsibilities says that the job's also to oversee the  
09:16:14 23 company's policies and assessments related to the controlled  
09:16:17 24 substances by analyzing state and federal guidelines to  
09:16:20 25 ensure the company's programs meet the requirements.

09:16:25 1 Also true?

09:16:27 2 **A** The document states that, sir.

09:16:28 3 **Q** All right. Then there's a third section, Job  
09:16:36 4 Requirements.

09:16:38 5 Do you see where I've highlighted that?

09:16:40 6 **A** Yes, sir.

09:16:40 7 **Q** And Walmart gives minimum qualifications for this job  
09:16:45 8 in this exhibit.

09:16:46 9 Do you see?

09:16:49 10 **A** Yes, sir, I see it. It's what the document says.

09:16:53 11 **Q** All right. Had to be a licensed pharmacist with a  
09:16:55 12 minimum of two years.

09:16:57 13 You were that, weren't you?

09:16:59 14 **A** Yes, sir.

09:17:02 15 **Q** In fact, you had, like, a lot more than two years'  
09:17:05 16 experience as a licensed pharmacist, fair?

09:17:11 17 **A** Yes, sir.

09:17:13 18 **Q** And then the candidates had to demonstrate competency  
09:17:16 19 in a few other areas: Judgment, customer service, executing  
09:17:24 20 programs and getting desired results, planning and  
09:17:27 21 improvement, ability to influence and communicate, ethics  
09:17:31 22 and compliance, adaptability, and building relationships.

09:17:36 23 Do you see that as well?

09:17:38 24 **A** Yes, sir.

09:17:39 25 **Q** Now, in addition to the minimum requirements, there

09:17:41 1 was one additional preferred qualification, and that is that  
09:17:46 2 somebody be a pharmacy manager or a pharmacist in charge or  
09:17:51 3 have some similar additional experience.

09:17:53 4 Do you see that?

09:17:55 5 **A** Yes, sir.

09:17:55 6 **Q** All right. So you applied for this job, didn't you?

09:18:03 7 **A** That is correct.

09:18:03 8 **Q** And I looked at your CV, which continues in this  
09:18:08 9 exhibit with page 4.

09:18:12 10 Are you able to see that?

09:18:14 11 **A** Yes, sir, I see the parts you have highlighted, and I  
09:18:17 12 have the document in my hand.

09:18:18 13 **Q** Great. Well, I want to look at it in reference to  
09:18:21 14 this question. And here's my question that I'm asking you.

09:18:25 15 The way Walmart structured your job with the minimum  
09:18:37 16 requirements they had for what the responsibilities were,  
09:18:40 17 were you set up to fail because of your --

09:18:51 18 UNIDENTIFIED SPEAKER: Objection. Form.

09:18:53 19 **Q** Were you set up to fail because of your  
09:18:55 20 qualifications?

09:18:56 21 **A** Not that I'm aware of.

09:18:57 22 **Q** I mean, you understand the job of doing this work,  
09:19:03 23 being the senior manager of Controlled Substances, it means  
09:19:07 24 more than just making sure that Walmart's profitable,  
09:19:11 25 doesn't it?

09:19:13 1 **A** Sir, I don't know where profitability comes into this  
09:19:16 2 job description. I didn't see that in here.

09:19:21 3 **Q** Did you view the job as one that meant more than  
09:19:23 4 making Walmart more profitable?

09:19:25 5 **A** Sir, I didn't have anything in my mind about  
09:19:27 6 profitability when I applied for this position.

09:19:30 7 **Q** But when you applied for this position, you wrote down  
09:19:37 8 on what -- your resume specifically, and one of the things  
09:19:43 9 you thought would be relevant, that you handled an annual  
09:19:47 10 budget of 1.5 billion in sales and 300 million in profits,  
09:19:53 11 didn't you?

09:19:55 12 **A** I see it. Thank you.

09:20:00 13 Those were requirements in the job that I was in in  
09:20:02 14 2009, sir.

09:20:03 15 **Q** P&L responsibility.

09:20:07 16 What's P&L stand for?

09:20:10 17 **A** At Walmart it stands for profit and loss.

09:20:19 18 **Q** Profit and loss.

09:20:23 19 You put that in your very top profile, right?

09:20:27 20 **A** That's where it's at in the document, sir, yes.

09:20:29 21 **Q** And then under Qualifications Summary where you  
09:20:33 22 summarize it, you say you've had over 20 years of full  
09:20:36 23 profit and loss responsibility; is that right?

09:20:44 24 **A** Over the area of -- over the area of operations that I  
09:20:47 25 was working in, yes.

09:20:51 1 Q Uh-huh. And you led successful executive-level  
09:20:56 2 marketing and finance campaigns where growth and  
09:20:58 3 accountability were paramount; is that right?

09:21:01 4 A That's what the document says.

09:21:03 5 Q So when I asked you whether or not this job meant more  
09:21:08 6 than making Walmart more profitable, and you said, I didn't  
09:21:13 7 think of it in terms of profitable, you do think quite  
09:21:20 8 heavily in terms of profit, don't you?

09:21:21 9 A In my previous areas of responsibility, profitability  
09:21:24 10 was one of the things that was manage -- that was measured.

09:21:28 11 Q Well, this is -- this first one at the bottom where  
09:21:30 12 you're touting your annual budget of 1.5 billion in sales  
09:21:40 13 and 300 million in profit, that's the job that you had at  
09:21:45 14 the time that you were applying, isn't it?

09:21:46 15 A That is correct.

09:21:46 16 Q In fact, you can go to the job you had before that,  
09:21:49 17 which is on the very next page, where the first bullet point  
09:21:52 18 you've got is "Analyze competition and market conditions."

09:21:56 19 Do you see that?

09:21:59 20 A I see that.

09:21:59 21 Q This is where you were talking about how you were  
09:22:02 22 the -- a team member of the Pharmacy Strategic Planning  
09:22:11 23 Committee that did everything from initiatives and budgets,  
09:22:13 24 objectives and procedures.

09:22:15 25 See that?

09:22:18 1 **A** Yes, sir, I see that.

09:22:19 2 **Q** And then this is one where you talked about your  
09:22:23 3 annual revenue of 5.1 billion in sales and 400 million in  
09:22:28 4 profits.

09:22:28 5 See that?

09:22:30 6 **A** Yes, sir, I see that.

09:22:32 7 **Q** Now, I tried to find where you might have some legal  
09:22:35 8 things or some compliance things that you touted, and I  
09:22:39 9 don't want to miss this.

09:22:40 10 You did develop and implement the California  
09:22:44 11 Pharmacist Meal and Break Program so that you-all gave your  
09:22:51 12 pharmacists break time and meal time, I guess, compliant  
09:22:54 13 with California laws.

09:22:55 14 Is that right?

09:22:57 15 **A** That's again what the document says.

09:22:59 16 **Q** And then again, if you look at your job before that,  
09:23:02 17 you again are talking about how you would evaluate financial  
09:23:07 18 performance to ensure region profitability.

09:23:10 19 Do you see that?

09:23:14 20 **A** Yes, sir, I see where it says that.

09:23:16 21 **Q** Not where it says that. That's where you said it.  
09:23:19 22 You wrote this, didn't you?

09:23:22 23 **A** That is what the document says, sir.

09:23:24 24 **Q** No, that's what you wrote, isn't it?

09:23:28 25 **A** That's what I said, yes, sir.

09:23:31 1 Q All right. Good.

09:23:32 2 So, and we can keep going through here. I think  
09:23:35 3 you'll see on just about every page you're talking about how  
09:23:37 4 you managed budgets, projected sales, and evaluated  
09:23:41 5 financial performance to ensure store profitability, profit  
09:23:45 6 and loss, journal accounting responsibilities.

09:23:47 7 You've got that on page 3 of your CV. You see that?

09:23:57 8 A Yes, sir.

09:23:57 9 Q Again, financial performance to ensure store  
09:23:59 10 profitability, profit and loss journal accounting  
09:24:02 11 responsibilities, et cetera.

09:24:03 12 You see that as well?

09:24:04 13 A I do see that.

09:24:05 14 Q All right. So now I'm going to take you back to the  
09:24:07 15 question that got us down that look through your CV and ask  
09:24:13 16 again: Did you feel like the job as the senior manager of  
09:24:19 17 Controlled Substance and Regulatory Affairs should mean more  
09:24:23 18 than just making Walmart profitable?

09:24:27 19 A I'm not sure I understand your question, sir.

09:24:29 20 Q Okay. My question is, you know, I'm -- I see the  
09:24:33 21 qualifications, and I see the way you applied for the job  
09:24:36 22 with your CV you wrote, but don't you believe that the job  
09:24:39 23 of someone who is going to drive the company's compliance  
09:24:41 24 with the regulatory requirements and oversee the company's  
09:24:50 25 policies and manage the training and education for the



09:24:53 1 controlled substance distribution, don't you figure that  
09:24:59 2 person ought to do more than simply make Walmart more  
09:25:04 3 profitable?

09:25:06 4 **A** The minimum requirements don't talk about anything in  
09:25:08 5 regards to profitability, sir, so I don't know what you're  
09:25:12 6 asking me.

09:25:12 7 **Q** Well, I'm asking you very simple: Does the job that  
09:25:24 8 you were applying for call for something more than simply  
09:25:30 9 making Walmart more profitable?

09:25:35 10 **A** Again, I don't see anywhere on this job description  
09:25:38 11 for the senior manager of Controlled Substances, Regulatory  
09:25:41 12 Affairs, Health and Wellness, where it says anything about  
09:25:44 13 profitability of the company.

09:25:48 14 **Q** Well, that's not my issue that I'm trying to get from  
09:25:52 15 you, but I will direct your attention to the very first  
09:25:55 16 thing, it says, "Oversees asset protection."

09:26:02 17 That kind of speaks about profits, doesn't it?

09:26:04 18 **A** Asset protection is about property of the company.

09:26:06 19 **Q** Yeah, that's part -- that's protecting the bottom  
09:26:09 20 line, isn't it?

09:26:13 21 **A** That's your definition, sir.

09:26:14 22 **Q** No, I think that's a -- isn't it yours?

09:26:16 23 **A** No, sir, I didn't see that -- anything about that. I  
09:26:19 24 said it -- asset protection is protecting the property of  
09:26:23 25 the company.

09:26:24 1 Q You don't think that affects the bottom line of the  
09:26:26 2 company's profitability, to protect their assets?

09:26:30 3 A I did not say that.

09:26:32 4 Q Well, does it?

09:26:33 5 A I'm not sure how to answer that question, sir.

09:26:36 6 Q Well, it's easy. When you oversee protecting the  
09:26:40 7 company's assets, are you helping the company in terms of  
09:26:49 8 the financial posture?

09:26:52 9 A I was not overseeing the company's assets, sir. That  
09:26:55 10 was not my responsibility. I was going to participate in  
09:26:57 11 asset protection investigations.

09:27:00 12 Q And this also deals with controlled substance loss  
09:27:02 13 action plans if y'all are having drugs stolen or things like  
09:27:06 14 that that affect profitability, right?

09:27:10 15 A It means to overview the loss action plan, sir, as it  
09:27:14 16 says in the document.

09:27:15 17 Q Yeah. Well, when you lose merchandise because it's  
09:27:17 18 stolen or something, that affects profitability, doesn't it?

09:27:21 19 A It could.

09:27:22 20 Q Now, let's talk about not just the job and the  
09:27:27 21 description of the job, but I want to talk about your  
09:27:33 22 performance in that job. Okay?

09:27:42 23 A Sure.

09:27:43 24 Q Did you get the job, I guess I should put on the  
09:27:46 25 record first?

09:27:48 1 **A** Yes, sir.

09:27:48 2 **Q** And we'll go into more detail under your performance  
09:28:00 3 when we get to the other issues I want to talk to you about  
09:28:03 4 later in the deposition.

09:28:04 5 But for starters, part of what your job responsibility  
09:28:14 6 was was to implement the Archer program, right?

09:28:27 7 **A** I don't know what you are referring to by the Archer  
09:28:29 8 program.

09:28:29 9 **Q** You've never heard about the Archer System Program?

09:28:39 10 **A** I am familiar with the Archer software program. I  
09:28:44 11 don't know what an Archer System Program is.

09:28:46 12 **Q** Oh, I'm sorry, I'm using the words that were used in  
09:28:49 13 your performance evaluation.

09:28:53 14 Why don't you take a moment and pull out Plaintiffs'  
09:28:57 15 Walmart 457. And I'm going to ask you about the first page  
09:29:05 16 of it and the second page, if you would. It's a long  
09:29:10 17 document. If you'll pull those and look at pages 1 and 2  
09:29:12 18 with me.

09:29:13 19 Now, you said you're not familiar with the term  
09:29:16 20 "Archer sister program -- Archer System Program" such that  
09:29:22 21 you could answer my question, but I was looking at your  
09:29:24 22 annual performance evaluation for the first year you were in  
09:29:27 23 this job or pretty close thereto, and one of your tasks that  
09:29:31 24 was given to you was to develop and implement the Archer  
09:29:38 25 System Program to track compliance.

09:29:42 1 Do you see where I read that?

09:29:44 2 **A** Okay. I see that down there.

09:29:46 3 **Q** Okay. So when I say that one of your performance  
09:29:49 4 tasks was to implement the Archer System Program, since your  
09:29:55 5 boss called it that and said that was your task, you're not  
09:29:59 6 going to fuss over it, are you?

09:30:01 7 **A** To me, sir, a system means that the actual hardware  
09:30:06 8 that's being used to operate the software. And I was not  
09:30:08 9 involved in the design or development of this -- the actual  
09:30:14 10 system. I was involved in the process of using the Software  
09:30:18 11 to track the DEA 106 plan of actions.

09:30:23 12 **Q** Well, I'm asking not did you write the program. I'm  
09:30:25 13 asking were you in charge of implementing the program.

09:30:29 14 Do you see I've wrote the word "implement" there?

09:30:33 15 **A** I will agree with the fact that I was working on the  
09:30:35 16 Archer software program, yes.

09:30:37 17 **Q** And you were going to implement it. That was your  
09:30:41 18 job?

09:30:41 19 **A** The software program, yes.

09:30:43 20 **Q** All right. And you were supposed to do this to help  
09:30:50 21 track compliance with the Drug Enforcement Administration --  
09:30:55 22 Agency, right?

09:30:56 23 **A** That was a tool that was going to assist us in being  
09:30:59 24 able to track DEA 106s, yes.

09:31:04 25 **Q** And another part of your job at the time, if you look

09:31:06 1 at the performance on the next page, you were supposed to  
09:31:12 2 direct controlled substance programs and policies.

09:31:18 3 And the description of that was to monitor and improve  
09:31:26 4 controlled substance training, policies and/or procedures.  
09:31:30 5 Fair?

09:31:31 6 **A** One of the goals, yes, sir.

09:31:33 7 **Q** All right. Your performance would include to monitor  
09:31:36 8 and improve the training, fair?

09:31:43 9 **A** That is what the goal says.

09:31:46 10 **Q** That's what your goal was, isn't it?

09:31:49 11 **A** That's what the document says, sir.

09:31:50 12 **Q** Okay. Well, you're not disagreeing with the document,  
09:31:53 13 are you?

09:31:54 14 **A** The document says that that was one of my goals.

09:32:00 15 **Q** Now, another goal that you had that's going to be  
09:32:02 16 relevant as we work through this is you were in charge of  
09:32:16 17 managing the refusal to fill policy, correct?

09:32:23 18 **A** That was one of the responsibilities that developed  
09:32:25 19 after the job was created.

09:32:26 20 **Q** Yeah. And that's sometimes abbreviated by the first  
09:32:30 21 letter, RTF, in your documents, refusal to fill. Correct?

09:32:37 22 **A** RTF is used as an abbreviation for refusal to fill.

09:32:42 23 **Q** And at some point you tried to integrate that or you  
09:32:48 24 were responsible to integrate that into the Archer program,  
09:32:52 25 correct?

09:32:52 1 **A** I was not involved in integrating RTF into Archer.

09:32:58 2 **Q** Did you at least assist in the conversion of RTF into  
09:33:03 3 Archer?

09:33:03 4 **A** I'm not sure what you mean by assist. I was aware of  
09:33:06 5 it, if that's what you're asking.

09:33:08 6 **Q** Well, what I mean is -- if you'll pull out Document  
09:33:12 7 291.

09:33:13 8 And on 291 I'm going to want to direct your attention  
09:33:16 9 to page 4.

09:33:17 10 All right. The only reason I'm asking it is because I  
09:33:20 11 just asked you this question before. I said, "Did you at  
09:33:26 12 least assist in the conversion of RTF into Archer?"

09:33:35 13 And you said, "I'm not sure what you mean by assist."

09:33:42 14 And so I've asked you to pull that document because on  
09:33:45 15 page 4, your boss's comments include that "Brad," you, "has  
09:33:54 16 managed the RTF process from the outset and assisted in the  
09:33:57 17 conversion of the RTF process into Archer."

09:34:01 18 Which is my question. So when you said, "I'm not sure  
09:34:07 19 what you mean by assist," I just mean whatever your boss  
09:34:10 20 said.

09:34:11 21 Does that help you at all to answer my question of  
09:34:14 22 whether or not you assisted in the conversion?

09:34:17 23 **A** Again, I don't know what Mr. Koch or Mr. Chapman, who  
09:34:21 24 wrote this -- let me see. I don't remember who wrote this  
09:34:23 25 one. I don't know what Mr. Chapman is referring to when he

09:34:27 1 says the word "Assist." I don't know what he means by  
09:34:32 2 assist.

09:34:34 3 **Q** Do you have a lot of trouble with your bosses because  
09:34:36 4 they seem to say things you didn't understand?

09:34:38 5 **A** Sir, I was definitely aware of the fact that  
09:34:42 6 Mr. Archer was being moved -- excuse me, that RTF was being  
09:34:44 7 moved to Archer. I was not involved in writing the  
09:34:48 8 software, changing the directions, changing what it looked  
09:34:51 9 like. I was not involved in that.

09:34:56 10 I was involved in making sure that they were -- the  
09:34:58 11 people that were doing that work were put in touch with the  
09:35:01 12 people at Walmart's information systems that managed  
09:35:06 13 Archer's program.

09:35:10 14 **Q** Okay. And then the last thing we ought to cover,  
09:35:14 15 looking at your professional life and background before we  
09:35:19 16 get into our four stops, is I want to talk about the results  
09:35:22 17 of you with the job. So we'll just put this down as the  
09:35:33 18 "Job results."

09:35:35 19 You tracking with me?

09:35:37 20 **A** Yes.

09:35:38 21 And, sir, you keep referring to my career at Walmart  
09:35:41 22 as my professional life. I would prefer you didn't call it  
09:35:44 23 that. I did not agree to call it my professional life.

09:35:47 24 **Q** What did you do for a profession if it wasn't working  
09:35:50 25 at Walmart?

09:35:50 1 **A** Well, profession is a practice of pharmacy. It's a --  
09:35:56 2 law is a profession as well. But just because I was a  
09:35:59 3 pharmacist for Walmart, it does not mean that was my  
09:36:02 4 professional life. There was things I did inside and  
09:36:05 5 outside that weren't just at Walmart.

09:36:07 6 **Q** Okay. So should we call it your corporate life?  
09:36:13 7 Would you be more comfortable --

09:36:15 8 **A** I think that Walmart career is appropriate.

09:36:24 9 **Q** Okay. I'll try and remember to reference it that way.  
09:36:26 10 Would you rather me change it on -- I've got it  
09:36:29 11 written down here. Would you be more comfortable if I put  
09:36:32 12 this down as your Walmart life?

09:36:33 13 **A** I would prefer you to call it my Walmart career.

09:36:45 14 **Q** You were a -- all right. Got it. We got your Walmart  
09:36:48 15 career.

09:36:49 16 Okay. Then with that, we are through with the first  
09:36:53 17 stop -- or not stop per se, the personal knowledge about  
09:36:59 18 you. And now we're ready to get on down the road to the  
09:37:07 19 next exit. Next exit is the requirements exit.

09:37:10 20 You tracking with me?

09:37:12 21 **A** Yes, sir.

09:37:13 22 **Q** Okay. And we'll start a clean sheet on this. This  
09:37:19 23 sheet will be the requirements.

09:37:20 24 And you'll see, looking at the sheet, that there were  
09:37:25 25 four areas that I want to talk to you about, and these



09:37:27 1 numbers that I've got on here are part of the Code of  
09:37:36 2 Federal Regulations pertaining to the type of career you had  
09:37:39 3 at Walmart.

09:37:46 4 Do you recognize those numbers?

09:37:50 5 **A** I don't recognize those numbers individually. I have  
09:37:52 6 heard of the Code of Regulations.

09:37:56 7 **Q** All right. The Code of Regulations is the law part of  
09:38:00 8 what you were required to oversee at Walmart, fair?

09:38:04 9 **A** The Code of Federal Regulations guided what we were  
09:38:07 10 supposed to do to be compliant, yes.

09:38:12 11 **Q** I mean, you were a man kind of in charge of that,  
09:38:15 12 weren't you?

09:38:15 13 **A** Can you help me with what time frame we're talking  
09:38:18 14 about?

09:38:19 15 **Q** Yes, sir. And I'll go back to Exhibit 2 that we  
09:38:22 16 talked about earlier and look at your -- the job detail of  
09:38:26 17 the job you were applying for and got. And it included  
09:38:33 18 under Description and Responsibilities that you were to  
09:38:40 19 "drive the company's compliance with federal and state  
09:38:42 20 regulatory requirements."

09:38:43 21 Do you see that?

09:38:44 22 **A** That is what the document says.

09:38:50 23 **Q** And so part of your job description and  
09:38:53 24 responsibilities was to see that y'all complied with federal  
09:39:00 25 and state regulatory requirements.

09:39:06 1 Now are you tracking with me?

09:39:08 2 **A** Yes, sir.

09:39:08 3 **Q** So in that regard, I want to talk to you about those  
09:39:12 4 requirements. And we'll start with Section 1301.71. If you  
09:39:24 5 can find P-GEN-187.

09:39:28 6 All right. Do you have that in front of you, sir?

09:39:30 7 **A** I do.

09:39:30 8 **Q** Okay. This is one of the regulations that you were  
09:39:35 9 making sure y'all complied with, correct?

09:39:41 10 **A** It is part of the Federal Regulations, Code of  
09:39:45 11 Regulations.

09:39:45 12 **Q** And it's part of the Code of Regulations that deals  
09:39:47 13 with the registration of manufacturers, distributors, and  
09:39:53 14 dispensers of controlled substances, fair?

09:39:59 15 **A** That is what the code -- that's what the topic says.

09:40:04 16 **Q** Now, Walmart, Walmart was a dispenser of controlled  
09:40:15 17 substances, true?

09:40:18 18 **A** Walmart and Sam's.

09:40:22 19 **Q** Oh, that's right, not just Walmart. But the Sam's  
09:40:26 20 stores were also dispensers, right?

09:40:32 21 **A** That is correct.

09:40:39 22 **Q** Now, did you know that Walmart was also a distributor  
09:40:41 23 of opioids?

09:40:43 24 **A** Walmart did maintain its own warehouse systems and  
09:40:55 25 distributed to the stores.

09:40:56 1 Q Yeah. So Walmart didn't distribute to other  
09:40:59 2 corporations, but Walmart distributed to itself and to  
09:41:05 3 Sam's; is that fair to say?

09:41:08 4 A Walmart would have had reverse distribution  
09:41:12 5 relationships with manufacturers to send back outdated  
09:41:14 6 product and things along that line, recalled materials,  
09:41:19 7 things like that. So there was distribution other than just  
09:41:21 8 Walmart stores and Sam's Clubs.

09:41:25 9 Q Thank you for that clarification.

09:41:27 10 Now, the controlled substances that are talked about  
09:41:29 11 in this section, that includes opioids, true?

09:41:34 12 A Opioids are a controlled substance.

09:41:37 13 Q All right. And if we look at the requirements, the  
09:41:44 14 security requirements generally, which is 1301.71.

09:41:52 15 Do you see that?

09:41:54 16 A Yes, sir.

09:41:54 17 Q And that in my requirements note card is 1301.71.  
09:42:03 18 I've called it "effective controls and procedures."

09:42:07 19 Do you see where I've written that?

09:42:09 20 A I do.

09:42:12 21 Q And I got that -- I'd like you to look at the language  
09:42:14 22 with me -- from Section A that says, "All applicants and  
09:42:19 23 registrants shall provide effective controls and procedures  
09:42:24 24 to guard against theft and diversion of controlled  
09:42:28 25 substances."

09:42:34 1 Do you see that?

09:42:35 2 **A** I do.

09:42:41 3 **Q** And so what we have here is "effective controls and  
09:42:43 4 procedures," which is what I've called that requirement.  
09:42:48 5 Fair?

09:42:51 6 **A** Correct.

09:42:57 7 **Q** And then it is "to guard against theft and diversion  
09:43:02 8 of controlled substances," which would include opioids,  
09:43:09 9 right?

09:43:10 10 **A** Opioids are a controlled substance, so they would be  
09:43:12 11 included.

09:43:12 12 **Q** So we're looking under this provision, "this" being  
09:43:21 13 1301.71, for effective controls and procedures to guard  
09:43:25 14 against theft and diversion, right?

09:43:37 15 **A** That's what it says in the first paragraph, yes, sir.

09:43:40 16 **Q** And you, one of your jobs, was to implement these and  
09:43:48 17 oversee these -- and oversee these effective controls and  
09:43:54 18 these effective procedures.

09:43:57 19 Is that also fair to say?

09:43:59 20 **A** I would say that that's not called out in the specific  
09:44:01 21 job description. It says "will be compliant with federal  
09:44:07 22 regulations." This happens to be one of the federal  
09:44:09 23 regulations.

09:44:10 24 **Q** Yeah, there are other ones y'all had to comply with  
09:44:13 25 too. We'll look at those in a moment.

09:44:16 1 But to comply with this federal regulation, you had to  
09:44:21 2 see to effective controls and procedures to guard against  
09:44:23 3 theft and diversion of controlled substances, including  
09:44:29 4 opioids. Right?

09:44:32 5 **A** That's what the requirement says. I won't say that  
09:44:35 6 that was specifically my job to do.

09:44:40 7 **Q** Okay. That's what your job description was, though?

09:44:46 8 **A** Job description I think said something about making  
09:44:49 9 sure that we remained compliant with federal and state  
09:44:51 10 regulations.

09:44:53 11 **Q** Right. And this is a federal regulation, right?

09:44:58 12 **A** One of many, yes, sir.

09:44:59 13 **Q** Okay. So you are to drive the company's compliance  
09:45:06 14 with this regulation; is that fair to say?

09:45:10 15 **A** As with all regulations, is my understanding.

09:45:14 16 **Q** And all I'm driving at is -- I'm guessing you grew up  
09:45:20 17 somewhere around St. Louis, because you went to school  
09:45:23 18 there.

09:45:25 19 Am I right?

09:45:25 20 **A** I went to school in St. Louis, that is correct.

09:45:27 21 **Q** Where did you grow up as a kid?

09:45:29 22 **A** Northern Illinois.

09:45:32 23 **Q** Okay. And where I grew up, one of my favorite things  
09:45:38 24 to do was to eat pie. I'm sure in your life you've eaten  
09:45:44 25 some pie. Right?

09:45:47 1 **A** Sure.

09:45:48 2 **Q** And I would like to think I could eat an entire pie,  
09:45:55 3 but I don't think I've ever pulled that one off, though I've  
09:45:58 4 eaten some pretty big pieces.

09:46:01 5 But you're familiar with how when you get a pie, you  
09:46:03 6 get to cut yourself a piece generally. And that's a piece  
09:46:07 7 of the pie, right?

09:46:08 8 **A** Yes, sir.

09:46:10 9 **Q** Your job was to drive the company's compliance with  
09:46:17 10 the whole pie, with all of the federal and state regulatory  
09:46:22 11 requirements that related to handling, correct?

09:46:25 12 **A** The job was to oversee that process of those systems  
09:46:31 13 that were in place, and most of the time deal with issues  
09:46:34 14 that developed if there was a problem with compliance with a  
09:46:38 15 particular regulation.

09:46:42 16 **Q** Right. But you didn't get to pick and choose which  
09:46:45 17 ones you drove compliance with. You were supposed to drive  
09:46:47 18 compliance with all of them, right?

09:46:49 19 **A** Well, Walmart should have been compliant with  
09:46:53 20 everything as it was. We should have found out exclusions  
09:46:55 21 or issues that would have been developed or found out and  
09:46:59 22 reported to us. That's how we would have dealt with driving  
09:47:03 23 compliance.

09:47:04 24 **Q** I'm not going to fuss on that point. That's part of  
09:47:06 25 my argument.

09:47:07 1 I just want to say, your job description was to drive  
09:47:13 2 the compliance. That's with all of the federal and state  
09:47:16 3 regulatory requirements, not just one or two of them.  
09:47:19 4 Right?

09:47:20 5 **A** The processes and programs for all federal regulations  
09:47:23 6 would have been a job much bigger than one person.

09:47:27 7 My job was to look into issues that developed and fix  
09:47:31 8 those problems that were pointed out as errors or issues  
09:47:35 9 with compliance.

09:47:38 10 **Q** I asked you earlier if they were setting you up for  
09:47:40 11 failure by giving you that big of a task.

09:47:43 12 Do you remember me asking you that question?

09:47:45 13 **A** Yes, sir, I remember that.

09:47:50 14 **Q** Because that's the task they gave you. That was the  
09:47:53 15 job description and responsibility, to drive the company's  
09:47:56 16 compliance with federal and state regulatory requirements  
09:47:59 17 related to handling, distribution, dispensing, and  
09:48:02 18 destruction of controlled substances. Wasn't it?

09:48:09 19 **A** Yeah, but if you look at the rest of that document,  
09:48:12 20 sir, it says by reviewing existing things that are in them.  
09:48:16 21 "By reviewing processes and logistics and providing  
09:48:19 22 recommendations based on regulatory requirements and guiding  
09:48:21 23 the development of corrective action plans." It didn't say  
09:48:23 24 that I had to create all of the compliance programs.

09:48:26 25 **Q** It says you were supposed to review the processes to

09:48:29 1 ensure regulatory compliance.

09:48:33 2 "Ensure." See that word?

09:48:35 3 **A** Yes, sir.

09:48:36 4 **Q** You were supposed to identify process and assessment  
09:48:39 5 gaps where there were problems.

09:48:41 6 Do you see that?

09:48:42 7 **A** Yes, sir.

09:48:43 8 **Q** You were supposed to provide recommendations based on  
09:48:46 9 the regulatory requirements.

09:48:48 10 Do you see that?

09:48:50 11 **A** Yes, sir.

09:48:51 12 **Q** You were supposed to guide the development of the  
09:48:54 13 corrective action plans to fix stuff.

09:48:57 14 Do you see that?

09:48:58 15 **A** That is what the document says.

09:49:00 16 **Q** And then you were supposed to ensure the execution of  
09:49:03 17 those action plans, weren't you?

09:49:06 18 **A** Again, that's -- when there was issues that were  
09:49:09 19 pointed out, if there was compliance problems, action plans  
09:49:13 20 would be created to resolve that compliance issue and we  
09:49:16 21 would oversee that process.

09:49:16 22 **Q** I mean, your job included analyzing these state and  
09:49:19 23 federal guidelines as well, to make sure the company's  
09:49:23 24 program met requirements, wasn't it?

09:49:25 25 **A** That is correct. When there are changes to the



09:49:27 1 guidelines or requirements, we would make sure that  
09:49:30 2 Walmart's policies and procedures were adjusted accordingly.

09:49:33 3 **Q** Now, you were in charge with the company of not only  
09:49:39 4 taking care of and dealing with the 1301.71, but you also  
09:49:48 5 then had responsibility for the state laws as well, state  
09:49:54 6 regulations.

09:49:55 7 That was a part of that, wasn't it?

09:49:57 8 **A** The job required compliance with federal and state  
09:50:00 9 regulations.

09:50:03 10 **Q** And the job required you to drive that compliance.

09:50:05 11 That was the words used in the document, right?

09:50:07 12 **A** That was what was in the job description, yes, sir.

09:50:10 13 **Q** And so you had to have familiarity and work with the  
09:50:15 14 Ohio regulations as well, didn't you?

09:50:18 15 **A** We're still talking about 2011?

09:50:21 16 **Q** Yes, sir.

09:50:21 17 **A** It would have been one of the states, yes, sir.

09:50:29 18 **Q** This is, I'll represent to you, a regulation in Ohio  
09:50:33 19 that is entitled "Prospective Drug Utilization Review," and  
09:50:46 20 this is the one that was in effect and promulgated as of,  
09:50:49 21 you'll see on page 2, 2003.

09:50:52 22 Do you see that?

09:50:56 23 **A** I do, on the back page, yes, sir.

09:50:58 24 **Q** Great.

09:51:00 25 If you'll look at the front page, this regulation

09:51:02 1 says, "Prior to dispensing any prescription, a pharmacist  
09:51:09 2 shall review the patient profile for the purpose of  
09:51:13 3 identifying," and then it's got nine different things that  
09:51:16 4 have to be identified.

09:51:17 5 Do you see that?

09:51:18 6 **A** Yes, sir, there are nine things listed.

09:51:24 7 **Q** And one of them, the number 1, is "Overutilization or  
09:51:31 8 underutilization."

09:51:32 9 Do you see that?

09:51:35 10 **A** Yes, sir.

09:51:36 11 **Q** And number 3, sir, says, "Drug-disease state  
09:51:43 12 contraindications." In other words, if the medicine doesn't  
09:51:47 13 fit the disease-type thing, right?

09:51:50 14 **A** Yes, sir.

09:51:51 15 **Q** Number 4 is "Drug-Drug interactions." You might be  
09:51:55 16 drinking a cocktail that doesn't go down too well, right?

09:51:58 17 **A** Some drugs do interact inappropriately with each  
09:52:03 18 other, yes, sir.

09:52:05 19 **Q** Number 5, "Incorrect drug dosage." Too much, too  
09:52:10 20 little, right?

09:52:10 21 **A** Yes, that's what it says.

09:52:12 22 **Q** "Abuse or misuse." That's another thing that the  
09:52:18 23 pharmacist needs to review for, correct?

09:52:20 24 **A** I said that's what it says.

09:52:23 25 **Q** Yeah.

09:52:24 1 **A** Point 7 says "Abuse or misuse."

09:52:27 2 **Q** And Point 8 says "Inappropriate duration of drug  
09:52:31 3 treatment," doesn't it?

09:52:32 4 **A** That is correct.

09:52:32 5 **Q** And then point B says, "Upon recognizing any of the  
09:52:38 6 above, a pharmacist, using professional judgment, shall take  
09:52:41 7 appropriate steps to avoid or resolve the potential  
09:52:48 8 problems," even consulting with the prescriber or counseling  
09:52:51 9 the patient.

09:52:52 10 Correct?

09:52:52 11 **A** Yes, sir.

09:52:55 12 **Q** Now, these regulations that Ohio had make it clear  
09:53:07 13 that before dispensing -- these are before dispensing,  
09:53:13 14 right?

09:53:19 15 **A** Yes, sir.

09:53:20 16 **Q** -- that the patient profile needs to be examined  
09:53:24 17 carefully. Would you agree?

09:53:25 18 **A** The patient profile did need to be reviewed, yes.

09:53:28 19 **Q** And issues needed to be resolved, correct?

09:53:32 20 **A** It says issues needed to be reviewed.

09:53:36 21 **Q** Well, down at the bottom it says, "Upon recognizing  
09:53:39 22 any of the above, a pharmacist shall take appropriate steps  
09:53:43 23 to avoid or resolve the potential problem," doesn't it?

09:53:47 24 **A** Yes, so it could be avoided or it could be resolved;  
09:53:50 25 not necessarily resolved.

09:53:51 1 Q Okay. So resolve issues or avoid them. I guess you  
09:54:00 2 can just send the person away, right?

09:54:01 3 A Or contact the prescriber and change the medication to  
09:54:03 4 a different drug.

09:54:04 5 Q In 2011, these rules changed in Ohio, didn't they?

09:54:12 6 A I don't know, sir.

09:54:16 7 Q Okay. Well, I thought -- I mean, you were in charge  
09:54:20 8 of keeping up with this, weren't you?

09:54:22 9 A The job description says that I was responsible for  
09:54:24 10 checking compliance with them, yes.

09:54:26 11 Q All right. Well, I'll tell you that it changed in  
09:54:29 12 2011. And I'll ask you to pull up the change -- it's  
09:54:33 13 Plaintiffs' Walmart 552 -- so I can ask you questions about  
09:54:37 14 it. And I'm going to mark this as Exhibit Number 8.

09:54:41 15 Have you got it in front of you?

09:54:42 16 A I do.

09:54:43 17 Q Okay. Let me help orient you to this. It's the exact  
09:54:50 18 same section of the Ohio regulations, but if you look on the  
09:54:54 19 very back page, you'll see that this one is from 2011.

09:55:01 20 See that?

09:55:02 21 A I do.

09:55:03 22 Q And the way they do their regulations, the additional  
09:55:10 23 "new material" is the part that they underline.

09:55:14 24 Do you see that?

09:55:18 25 A Yes, sir.

09:55:18 1 Q And so the new material includes, in Section B, this  
09:55:26 2 statement. And let's keep it in context. We already looked  
09:55:33 3 at it, "Upon recognizing any of the above, a pharmacist,  
09:55:37 4 using professional judgment, will take appropriate steps to  
09:55:42 5 avoid and resolve the problem."

09:55:43 6 Remember we had that discussion?

09:55:45 7 A Yes, sir.

09:55:46 8 Q And then it adds this: "These steps may include," not  
09:55:52 9 simply consulting with the prescriber or counseling the  
09:55:55 10 patient, but "also requesting and reviewing an OARRS report  
09:56:02 11 or another state's report, if applicable and available."

09:56:10 12 Do you see that?

09:56:11 13 A Yes, sir.

09:56:12 14 Q Can you tell the jury, please, what is the, as of  
09:56:17 15 2011, what is the OARRS report?

09:56:19 16 A Most likely the OARRS report is a prescription  
09:56:22 17 monitoring program.

09:56:24 18 Q For Ohio perhaps?

09:56:26 19 A I would guess, yes.

09:56:29 20 Q Those are important prescription monitoring programs,  
09:56:37 21 aren't they?

09:56:38 22 A They are a tool to assist the pharmacist in their  
09:56:40 23 professional judgment.

09:56:42 24 Q So this continues to say -- it's added this whole  
09:56:48 25 subpoint D on the back -- "Prior to dispensing a

09:56:53 1 prescription, at a minimum, a pharmacist shall request and  
09:56:59 2 review an OARRS report covering at least a one-year time  
09:57:05 3 period or another state's report, where applicable and  
09:57:08 4 available, if a pharmacist becomes aware of a person  
09:57:12 5 currently," and then it lists five items.

09:57:14 6 Do you see that?

09:57:19 7 **A** Yes, sir, I see those.

09:57:32 8 **Q** And then "It's after obtaining that initial OARRS  
09:57:35 9 report on a patient that a pharmacist uses professional  
09:57:40 10 judgment about dispensing."

09:57:43 11 You see that as well?

09:57:45 12 **A** Yes, sir, I do see that.

09:57:47 13 **Q** Now, this was set to become effective as of October  
09:57:51 14 27, 2011. We see that on the third page.

09:57:57 15 Do you see that as well?

09:57:58 16 **A** That's what the document states, yes.

09:58:02 17 **Q** Okay. So you are -- let's go back to your sheet on  
09:58:12 18 the job.

09:58:13 19 You started that in February of 2011? Is that right?

09:58:24 20 **A** That is correct.

09:58:24 21 **Q** So you are in the job of driving compliance with state  
09:58:31 22 regulations like this -- and by "this" I mean Exhibit 8 --  
09:58:41 23 in 2011. Fair?

09:58:43 24 **A** That was one of the requirements to be compliant with  
09:58:45 25 state regulations.

09:58:45 1 Q So did you have a computer program for your stores  
09:58:50 2 that would give the OARRS report so that the pharmacist  
09:58:59 3 could look it up immediately when someone presented with a  
09:59:01 4 prescription that a pharmacist might have had a concern  
09:59:06 5 over?

09:59:07 6 A Sir, I don't know the exact dates of when Walmart went  
09:59:10 7 online with the OARRS system, but Walmart went online with  
09:59:13 8 all state prescription monitoring programs as they became  
09:59:18 9 available and as they were tested throughout the years.

09:59:21 10 Q So we ought to know that if it was effective October  
09:59:25 11 27, 2011, you would have driven compliance almost  
09:59:30 12 immediately with it, right?

09:59:35 13 A I would not have personally been the individual  
09:59:37 14 involved in that. I would have utilized the director over  
09:59:40 15 that particular state.

09:59:41 16 Q Yeah. You would have told people to do it, but you  
09:59:45 17 would have seen that the computer system had the OARRS  
09:59:48 18 report available, right?

09:59:55 19 A Again, I don't know the dates specifically in this  
09:59:57 20 particular state, sir. That was nearly 10 years ago.

10:00:03 21 Q Okay. But it's reasonable to expect that you'd have  
10:00:07 22 done that. That was your job to do it, to drive compliance,  
10:00:10 23 right?

10:00:10 24 A It's reasonable to assume that Walmart would have been  
10:00:13 25 compliant with that regulation.

10:00:15 1 Q And I want to go back to the bigger picture and talk  
10:00:30 2 about 1306.4, "Corresponding responsibility."

10:00:39 3 Do you see that section?

10:00:41 4 A Yes, sir.

10:00:42 5 Q Now, I asked you earlier if you wanted to pull that in  
10:00:46 6 advance, to pull P-GEN-174. And that is the regulation  
10:00:53 7 we're going to be talking about now. So if you could pull  
10:00:56 8 that, that would be helpful.

10:00:58 9 I'm going to mark this as Exhibit 9.

10:01:02 10 "A prescription for a controlled substance to be  
10:01:04 11 effective must be issued for a legitimate medical purpose by  
10:01:11 12 an individual practitioner acting in the usual course" --  
10:01:18 13 should say -- "her or his professional practice," right?

10:01:20 14 A Yes.

10:01:22 15 Q And so I'm using that language about the corresponding  
10:01:27 16 responsibility, and I want to make sure we understand the  
10:01:31 17 requirements in that regard. All right?

10:01:35 18 A Okay.

10:01:36 19 Q So the corresponding responsibility of the pharmacist  
10:01:42 20 who fills the prescription. It says, "An order purporting  
10:01:51 21 to be a prescription issued not in the usual course of  
10:01:54 22 professional treatment or in the legitimate or authorized  
10:01:56 23 research is not a prescription within the meaning and intent  
10:02:00 24 of" this section -- well, of actually Section 309.

10:02:03 25 Do you see that?



10:02:04 1 **A** Yes.

10:02:04 2 **Q** "And the person knowingly filling such a purported  
10:02:11 3 prescription, as well as the person issuing it, shall be  
10:02:15 4 subject to the penalties provided for violating this  
10:02:18 5 provision of the law relating to controlled substances."

10:02:26 6 Do you see that?

10:02:27 7 **A** Yes.

10:02:27 8 **Q** So the pharmacist has the responsibility under this  
10:02:34 9 requirement that's also in addition to the doctor's, right?

10:02:42 10 **A** Yeah, it says the pharmacist has a corresponding  
10:02:44 11 responsibility along with the prescriber.

10:02:46 12 **Q** Yeah. And that is a corresponding responsibility to  
10:02:50 13 fill only those prescriptions that, one, are proper  
10:02:58 14 prescriptions; and, two, have been written by a medical  
10:03:09 15 practitioner. Correct?

10:03:15 16 **A** I think it states that the pharmacist needs to be sure  
10:03:18 17 the prescription was issued for a legitimate -- legitimate  
10:03:21 18 medical purpose and that the prescriber was acting within  
10:03:25 19 their -- their individual course of practice.

10:03:30 20 **Q** Okay. I'm going to mark P-GEN-220 as Exhibit 10.  
10:03:44 21 It's not too big. It's just 13.06 -- no, 1306.06.

10:03:51 22 Do you see that, sir?

10:03:53 23 **A** Yes.

10:03:53 24 **Q** And that's -- I think I got it right that time,  
10:04:00 25 "Professional Practice."

10:04:04 1 Read it with me, okay?

10:04:07 2 It says, "A prescription for a controlled substance  
10:04:11 3 may only be filled by a pharmacist acting in the usual  
10:04:14 4 course of her or his professional practice and either  
10:04:19 5 registered individually or employed in a registered  
10:04:25 6 pharmacy, a registered central fill pharmacy, or registered  
10:04:30 7 institutional practitioner."

10:04:32 8 Do you see where I read?

10:04:33 9 **A** Yes, sir.

10:04:34 10 **Q** And there's this requirement of someone doing it in  
10:04:38 11 their professional practice. Right?

10:04:47 12 **A** It's what the document says.

10:04:48 13 **Q** And so only pharmacists can fill these opioid  
10:04:58 14 prescriptions in the usual course of their professional  
10:05:02 15 practice, right?

10:05:07 16 **A** This document states that they can fill controlled  
10:05:10 17 substances. And opiates is a controlled substance, but it  
10:05:13 18 doesn't state specifically opiates.

10:05:15 19 **Q** Right. But it includes -- that's kind of like the big  
10:05:18 20 pie and one of the slices. The big pie is controlled  
10:05:23 21 substances; one of the slices is opioids.

10:05:25 22 They're included in that, aren't they?

10:05:27 23 **A** Opioids are a controlled substance.

10:05:29 24 **Q** Now, what I'd like to do is talk to you about how you  
10:05:35 25 became aware of various issues related to these provisions.

10:05:47 1 Okay?

10:05:48 2 **A** Okay.

10:05:50 3 **Q** Okay. You know about the *Holiday* case, don't you?

10:05:56 4 **A** Sir, I'm unaware of the *Holiday* case.

10:05:59 5 **Q** Okay. I saw a bunch of e-mails from you about it.

10:06:02 6 Do you not remember it?

10:06:03 7 **A** I do not recall e-mails specifically stating the

10:06:05 8 *Holiday* case.

10:06:08 9 **Q** All right. Well, let's look at the case together and  
10:06:10 10 see if it rings any bells to you as we go along.

10:06:14 11 You can see on the front where I've highlighted  
10:06:17 12 "*Holiday CVS, doing business as CVS Pharmacies Numbers 219,*  
10:06:24 13 *5195, decision and order.*"

10:06:26 14 Do you see that?

10:06:27 15 **A** I do see that on this document.

10:06:31 16 **Q** And this was an enforcement action by the Department  
10:06:37 17 of Justice.

10:06:37 18 Do you see that as well?

10:06:48 19 **A** That is what the document states.

10:06:49 20 **Q** And in that document you'll see on the third page this  
10:06:55 21 bold print, "Exception Number 2"?

10:07:05 22 **A** I do.

10:07:05 23 **Q** And it says "the Administrative Law Judge's" -- that's  
10:07:08 24 what ALJ stands for -- "findings that the respondents" --  
10:07:13 25 that's the pharmacy here, that's CVS -- "dispensed

10:07:20 1 controlled substances pursuant to prescriptions which raised  
10:07:24 2 red flags that could not be resolved, and thus violated  
10:07:27 3 their corresponding responsibility under federal law."

10:07:39 4 And the challenge was that that finding wasn't  
10:07:42 5 supported by substantial evidence.

10:07:51 6 Do you see where I've read?

10:07:52 7 **A** I do see that on that document, sir.

10:07:55 8 **Q** Well, this says, "The respondents take exception to  
10:07:59 9 the Administrative Law Judge's findings because they are,  
10:08:01 10 quote, based solely on the testimony of the Government's  
10:08:06 11 expert, who stated that he found certain red flags on  
10:08:09 12 approximately 50 of the more than 25,000 prescriptions  
10:08:13 13 filled by respondents." Says he found them "to be  
10:08:19 14 unresolvable."

10:08:20 15 Do you see that?

10:08:21 16 **A** I see where it says that in this document, yes, sir.

10:08:25 17 **Q** Okay. Now, the ALJ finding then is detailed here.  
10:08:36 18 And you can go down to the paragraph that starts with the  
10:08:39 19 Administrative Law Judge, "the ALJ."

10:08:44 20 Do you see that paragraph?

10:08:45 21 **A** Yes, sir.

10:08:45 22 **Q** It says, "The Administrative Law Judge found credible  
10:08:52 23 Professor Doering's testimony that controlled substances are  
10:08:56 24 high alert drugs."

10:09:03 25 Do you see that?

10:09:03 1 **A** I see where it says that in this document.

10:09:05 2 **Q** "And that among controlled substances, drugs such as  
10:09:08 3 opioids and benzodiazepines, and other central nervous  
10:09:15 4 system depressant drugs, require the highest level of  
10:09:19 5 scrutiny on the part of a pharmacist who's presented with  
10:09:23 6 prescriptions for these drugs."

10:09:24 7 Do you see that as well?

10:09:25 8 **A** Again, that is what the document says.

10:09:36 9 **Q** And it goes on to talk about the red flags, "that in  
10:09:39 10 pharmacy practice there are various red flags which create a  
10:09:42 11 level of concern that might cause a pharmacist to either  
10:09:45 12 choose not to fill a prescription or take some other kind of  
10:09:47 13 actions."

10:09:51 14 And the professor also testified, "The more red flags  
10:09:55 15 there are, the stronger the suspicion is."

10:09:58 16 Do you see where I'm reading?

10:09:59 17 **A** I do see where you're reading, sir.

10:10:01 18 **Q** All right. So if we go back to the note card that  
10:10:08 19 we're taking, the *Holiday* case talks about the need -- that  
10:10:12 20 there are red flags that must be resolved, correct?

10:10:23 21 **A** The *Holiday* case does talk about red flags.

10:10:25 22 **Q** And that's not a brand new term for you. You know  
10:10:29 23 what are red flags, don't you?

10:10:31 24 **A** I would think any pharmacist would know what a red  
10:10:37 25 flag is.

10:10:38 1 Q And Professor Doering specifically identified such red  
10:10:44 2 flags as including the patient's paying for it with cash.

10:10:46 3 Do you see that?

10:10:47 4 A I do.

10:10:53 5 Q The respective locations of the patient and  
10:10:56 6 prescriber.

10:10:57 7 See that?

10:10:59 8 A Yes, sir, I see that.

10:11:00 9 Q That a prescriber writes for certain combinations of  
10:11:09 10 drugs or patterns of drugs.

10:11:12 11 Do you see that?

10:11:13 12 A That is correct.

10:11:13 13 Q That multiple patients presenting prescriptions for  
10:11:16 14 the same drugs in the same quantity from the same doctor,  
10:11:20 15 without any kind of variability or change.

10:11:24 16 Do you see that?

10:11:29 17 A I do see that.

10:11:31 18 Q I mean, those -- this decision came out in 2012. So  
10:11:37 19 we at least certainly expect to see these red flags listed  
10:11:40 20 for Walmart in 2012, right?

10:11:46 21 A Those appear to be this doctor -- or Professor  
10:11:50 22 Doering's red flags that he called out. Whether or not  
10:11:52 23 those red flags are listed in Walmart's POMs, I do not  
10:11:57 24 recall.

10:11:58 25 Q Well, they're not just ones he listed out. They're

10:12:01 1 ones that caused the -- were used to support the  
10:12:04 2 Government's finding that the pharmacy failed to follow  
10:12:08 3 1306.4, true?

10:12:10 4 **A** Again, it says Dr. Doering is the one who called out  
10:12:13 5 these red flags.

10:12:16 6 **Q** Uh-huh. And the Administrative Law Judge is the one  
10:12:19 7 that found them a violation of corresponding responsibility,  
10:12:22 8 right?

10:12:23 9 **A** That's what it says. That's what you're telling me  
10:12:27 10 is -- the summation of this information is from the *Holiday*  
10:12:30 11 case.

10:12:31 12 **Q** And because there's corresponding responsibility, the  
10:12:40 13 pharmacist can't just blame the doctor and say, hey, not my  
10:12:44 14 fault. I didn't write it. I just filled it.

10:12:51 15 That is not a legitimate excuse, is it?

10:12:54 16 **A** The corresponding responsibility appears to be the  
10:12:58 17 Federal Government's definition of what the states refer to  
10:13:02 18 as professional judgment. And so when a pharmacist applies  
10:13:05 19 their professional judgment when interpreting a  
10:13:07 20 prescription, that's how they apply corresponding  
10:13:09 21 responsibility in interpreting whether that prescription is  
10:13:11 22 for legitimate purposes and should be filled or should not  
10:13:14 23 be filled.

10:13:15 24 **Q** Yeah. And I think we're saying the same thing. Let  
10:13:19 25 me -- let me try it this way.

10:13:21 1 When it comes to dispensing opioids, any other drugs  
10:13:26 2 as well, the pharmacist is not just a human vending machine  
10:13:33 3 where if you put your money and prescription in, they spit  
10:13:36 4 out the product, right?

10:13:39 5 **A** Well, pharmacists have a profession for a reason.  
10:13:43 6 It's not just interpret prescriptions. It's also to, you  
10:13:47 7 know, communicate with the patients and the doctors, and  
10:13:49 8 many other responsibilities.

10:13:50 9 **Q** Yeah. They're supposed to be analyzing this stuff,  
10:13:53 10 not just blindly saying, oh, Doctor wrote it, I'll fill it,  
10:14:02 11 right?

10:14:02 12 **A** That's why they use their professional judgment before  
10:14:04 13 filling a prescription.

10:14:04 14 **Q** And then these opioids, according to *Holiday*, opioids  
10:14:07 15 are a high alert drug. Fair?

10:14:10 16 **A** All controlled substances are high alert drugs.

10:14:15 17 **Q** Right. So that would include opioids, right?

10:14:18 18 **A** Opioids is one of the controlled substances, that is  
10:14:22 19 correct.

10:14:22 20 **Q** If you can find 188, P-GEN-188, I'll mark it as  
10:14:33 21 Exhibit 12 and ask you a question or two about it, not a  
10:14:37 22 lot.

10:14:37 23 And this is just another requirement, that this is the  
10:14:39 24 requirement that records and reports be kept. Every  
10:14:44 25 inventory and other record required to be kept must be kept



10:14:47 1 by a registrant and available for at least two years from  
10:14:51 2 the date of such inventory or records, true?

10:15:00 3 **A** That's what the regulation states.

10:15:02 4 **Q** And so you were aware when you were with the company  
10:15:04 5 about the need to maintain records related to controlled  
10:15:06 6 substances. Fair?

10:15:07 7 **A** I was aware there were record requirements for  
10:15:11 8 controlled substances, yes.

10:15:11 9 **Q** Then with that, we can move on down the road.

10:15:30 10 So the next step on the road map. We've done  
10:15:33 11 requirements. Now I want to look at failures. Okay?

10:15:36 12 **A** Okay.

10:15:37 13 **Q** And again, that's my word for it, and I don't want to  
10:15:41 14 leave a suggestion you're agreeing with me. Maybe you will,  
10:15:47 15 maybe you won't. But that's the subject I want to talk to  
10:15:49 16 you about. All right?

10:15:50 17 **A** Yes, sir.

10:15:54 18 **Q** Now, Walmart needs to avoid failing to follow the  
10:16:00 19 rules. The rules need to be followed, true?

10:16:06 20 **A** If you're going to be compliant, you have to follow  
10:16:08 21 the rules.

10:16:09 22 **Q** And then also, in addition to that, I'm looking for  
10:16:12 23 you to admit or deny that the pharmacy is the last line of  
10:16:15 24 defense when it comes to keeping prescriptions from being  
10:16:20 25 filled wrongly.

10:16:27 1 Would you agree with me?

10:16:27 2 **A** I would say pharmacies are one of the links in the  
10:16:32 3 chain before a prescription gets filled, that has to be  
10:16:41 4 reviewed before you get a prescription filled.

10:16:43 5 **Q** Okay. I like that, "one of the links in the chain."

10:16:46 6 In fact, they're the last link in the chain to getting  
10:16:49 7 it filled, aren't they?

10:16:50 8 **A** Well, they're the person that the prescription is  
10:16:52 9 presented to towards end of the process, yes.

10:16:54 10 **Q** All right. Next subject on the issue of failures. I  
10:16:57 11 want to first look at what I'm going to call written-up  
10:17:00 12 failures.

10:17:03 13 Does that make any sense to you or do I need to  
10:17:13 14 explain it, "written up"?

10:17:16 15 **A** I'm not sure what you mean.

10:17:18 16 **Q** All right. Let me ask it this way -- or explain it  
10:17:21 17 this way.

10:17:22 18 Do you drive a car?

10:17:25 19 **A** Yes.

10:17:26 20 **Q** Okay. You are familiar with how most roads post a  
10:17:30 21 speed limit, right?

10:17:37 22 **A** That is correct.

10:17:38 23 **Q** And sometimes there'll be a police officer who has got  
10:17:43 24 a radar gun in that road -- or on that road who can catch  
10:17:51 25 those people who violate the law on the speed limit, right?

10:17:59 1 **A** That is the practice of some police departments.

10:18:02 2 **Q** And several of the police officers I've gotten to know  
10:18:07 3 over the years have a tendency to write me up. They'll  
10:18:10 4 write a ticket to me saying, you went 63 in a 55, or  
10:18:16 5 whatever it may be. Right?

10:18:20 6 **A** That's a possibility.

10:18:23 7 **Q** But not every time I violate the speed limit -- which  
10:18:30 8 I try not to do, but at times I do -- not every time do I  
10:18:34 9 get caught and written up.

10:18:35 10 You tracking with me?

10:18:38 11 **A** Okay.

10:18:41 12 **Q** So what I want to talk about here are not every time  
10:18:44 13 that the company may have failed. I want to talk about the  
10:18:50 14 times the company's failed where it's gotten written up by  
10:18:52 15 the DEA. All right?

10:18:55 16 **A** Yes, sir, I understand.

10:18:57 17 **Q** Do you have Plaintiffs' Exhibit -- well, it's  
10:19:03 18 Plaintiffs' Walmart 255. I'm going to make it Exhibit 13.

10:19:06 19 This is a settlement agreement.

10:19:10 20 Do you see that?

10:19:11 21 **A** That's what it's titled.

10:19:13 22 **Q** And it's a settlement agreement between the United  
10:19:22 23 States, with the Drug Enforcement Agency being the operative  
10:19:26 24 part of the Department of Justice, and Walmart Stores.

10:19:30 25 Do you see that?

10:19:31 1 **A** Yes, sir.

10:19:35 2 **Q** And this is a settlement agreement that arose out of  
10:19:39 3 the investigation of Walmart Store 2292 for violation the  
10:19:47 4 CSA.

10:19:48 5 Do you see that?

10:19:51 6 **A** Again, that's what the document says.

10:19:53 7 **Q** You understand the CSA --

10:19:56 8 **A** It says CSA.

10:19:58 9 **Q** Which is the Controlled Substances Act based on your  
10:20:02 10 knowledge, right?

10:20:03 11 **A** Well, I don't know if that's what this document is  
10:20:05 12 referring to or not, but it does say CSA.

10:20:07 13 **Q** So we know as we're reading along that as a result of  
10:20:13 14 its investigation, the DEA has contended that Walmart 2292  
10:20:19 15 has violated the CSA and the related Code of Federal  
10:20:26 16 Regulations. And then it gives us the explanation if we  
10:20:28 17 continue.

10:20:29 18 You tracking with me?

10:20:30 19 **A** I followed you so far on this form.

10:20:35 20 **Q** All right. It says, "By, 1," and it talks about  
10:20:43 21 "filling 104 prescriptions written by Daniel Healy under  
10:20:47 22 Dr. Murray's DEA number."

10:20:50 23 It talks about, "2, failing to include all the  
10:20:53 24 required information on 39 prescriptions for controlled  
10:20:59 25 substances written by Dr. Healy."

10:21:01 1 And then it's got number 3 right here.

10:21:04 2 Do you see where I've circled that?

10:21:06 3 **A** Yes, sir.

10:21:06 4 **Q** "Filling the 104 prescriptions referenced above,  
10:21:12 5 notwithstanding the absence of a legitimate medical purpose  
10:21:18 6 for those prescriptions."

10:21:20 7 Did I read that correctly?

10:21:28 8 **A** That is what the document says.

10:21:31 9 **Q** And then it cites CFR, Code of Federal Regulations,  
10:21:39 10 1306.04, little A.

10:21:44 11 Do you see that?

10:21:45 12 **A** I do.

10:21:45 13 **Q** And that is the corresponding responsibility  
10:21:49 14 requirement, 1306.04, that we talked about as a requirement  
10:21:56 15 before, right?

10:21:57 16 **A** We did talk about 1306.04 before.

10:22:09 17 **Q** So now let's go to 2011. And I want to look at  
10:22:16 18 Walmart 304, which I'm going to mark as Exhibit Number 15.

10:22:23 19 This is the Administrative Memorandum of Agreement.

10:22:29 20 Now, you're familiar with this document because this  
10:22:32 21 was something that was in place at the time you took over  
10:22:36 22 the job of driving Compliance, correct?

10:22:41 23 **A** I was not familiar with this document at the time I  
10:22:43 24 took over in 2011.

10:22:46 25 **Q** But you became familiar with it real quick once you

10:22:50 1 took over, didn't you?

10:22:51 2 **A** It was brought to my attention there would be some  
10:22:53 3 things that needed to be worked on as a result of this  
10:22:56 4 agreement. That happened sometime after March of 2011.

10:23:03 5 **Q** Now, I want you to first look at the background and  
10:23:08 6 the allegations that are made. And so that's under this  
10:23:15 7 point -- subpoint -- big point II, Roman Numeral II. And  
10:23:22 8 it's concerning specifically Walmart Pharmacy 10-2177 in San  
10:23:32 9 Diego, California.

10:23:33 10 Do you see that?

10:23:34 11 **A** I do.

10:23:35 12 **Q** Now, the Office of Diversion Control issued an order  
10:23:46 13 to show cause, and that order to show cause alleged that the  
10:23:54 14 Walmart pharmacy did some things that are enumerated here.  
10:24:01 15 And I want to make sure we're reading it together.

10:24:03 16 Do you see where I am?

10:24:04 17 **A** Yes, sir.

10:24:04 18 **Q** All right. "Improperly dispensed controlled  
10:24:10 19 substances to individuals based on purported prescriptions  
10:24:16 20 issued by physicians who were not licensed to practice  
10:24:19 21 medicine in California."

10:24:21 22 Did I read that right?

10:24:25 23 **A** That's what it says.

10:24:27 24 **Q** "2, Dispensed controlled substances to individuals  
10:24:33 25 located in California based on Internet prescriptions issued

10:24:37 1 by physicians for other than a legitimate medical purpose  
10:24:46 2 and/or outside usual course of professional practice, in  
10:24:51 3 violation of federal and state law."

10:24:54 4 Do you see that?

10:24:54 5 **A** I do.

10:24:55 6 **Q** "3, Dispensed controlled substances to individuals  
10:25:04 7 that Walmart Pharmacy knew or should have known were  
10:25:07 8 diverting the controlled substances."

10:25:09 9 Do you see that as well?

10:25:10 10 **A** That's what the document says.

10:25:13 11 **Q** All right. Now, "if these allegations could be proven  
10:25:24 12 at a hearing, it would constitute a basis to revoke the DEA  
10:25:30 13 registration of that Walmart pharmacy."

10:25:33 14 Do you see that as well?

10:25:34 15 **A** Again, it is what the document says.

10:25:41 16 **Q** And the document goes on to lay out that "The parties,  
10:25:45 17 however, wish to settle this administrative matter."

10:25:49 18 And that's what this is, is an agreement to do so.

10:25:52 19 Fair?

10:25:55 20 **A** Yes, sir.

10:25:56 21 **Q** All right. Then the terms and conditions of the  
10:26:00 22 settlement are on the next page, Roman Numeral III. And I  
10:26:04 23 want to focus on the obligations of Walmart, which are  
10:26:07 24 enumerated in subpoint 4.

10:26:11 25 Do you see where I am?

10:26:14 1 **A** I do, sir.

10:26:19 2 **Q** Now, this is an obligation of Walmart, not simply that  
10:26:26 3 individual store, correct?

10:26:31 4 All right. "Walmart agrees to maintain a compliance  
10:26:35 5 program, updated as necessary."

10:26:43 6 Fair? And we're going to take it in bite size.

10:26:46 7 That's not the only thing. I know the sentence continues.

10:26:48 8 But that's the start, right?

10:26:50 9 **A** Again, that's what the document says so far.

10:26:51 10 **Q** All right. So we can put on our bullet points,  
10:26:55 11 "maintain compliance program," and we can also put "update  
10:27:02 12 as necessary," right?

10:27:05 13 Is that fair?

10:27:07 14 **A** That's what the first two lines say of this.

10:27:13 15 **Q** "And this compliance program will be designed to  
10:27:18 16 detect and prevent diversion of controlled substances."

10:27:22 17 Do you see that?

10:27:28 18 **A** Yes, sir.

10:27:28 19 **Q** So we can say that it's designed to detect and prevent  
10:27:32 20 diversion. Fair?

10:27:47 21 **A** Again, that's what the document says.

10:27:53 22 **Q** "This program shall include procedures to identify the  
10:27:59 23 common signs associated with the diversion of controlled  
10:28:04 24 substances."

10:28:07 25 Do you see that as well?



10:28:09 1 **A** Yes, sir.

10:28:09 2 **Q** And so we can add to here, the agreed terms is to  
10:28:20 3 identify common signs. Right?

10:28:22 4 **A** That is one of the things listed on this document.

10:28:27 5 **Q** And then it gives us some examples, including, but not  
10:28:33 6 limited to, doctor shopping, requests for early refills,  
10:28:41 7 altered or forged prescriptions, prescriptions written by  
10:28:43 8 doctors not licensed to practice medicine in the  
10:28:45 9 jurisdiction where the patient's located, prescriptions  
10:28:48 10 written for other than a legitimate medical purpose, by an  
10:28:54 11 individual practitioner acting outside the usual course of  
10:28:56 12 her or his professional practice.

10:28:58 13 Right?

10:28:58 14 **A** Those are things listed on the document, yes.

10:29:08 15 **Q** And this document -- the agreement goes on to say,  
10:29:10 16 "The program shall also include procedures to report thefts  
10:29:12 17 and significant losses of controlled substances."

10:29:17 18 Right?

10:29:17 19 **A** That's what it says.

10:29:20 20 **Q** And then I want to pay attention to the next clause.

10:29:24 21 "And the routine and periodic training of all Walmart  
10:29:29 22 employees, including new employees, that are responsible for  
10:29:40 23 controlled substances regarding their responsibilities under  
10:29:43 24 the CSA and regarding relevant elements of the compliance  
10:29:47 25 program."

10:29:49 1 Do you see that?

10:29:51 2 **A** Yes, sir.

10:29:52 3 **Q** And this idea, or obligation if you will, is for  
10:29:59 4 training all employees that are dealing with the controlled  
10:30:14 5 substances, right?

10:30:15 6 **A** That is what it says on this document.

10:30:20 7 **Q** It's to be routine and periodic, right? That  
10:30:30 8 training.

10:30:32 9 **A** That is what the document says.

10:30:34 10 **Q** Now, this isn't just for that Walmart store. Again,  
10:30:44 11 this says that this compliance program shall apply to all  
10:30:50 12 current and future Walmart pharmacies that are registered  
10:30:54 13 with the DEA; is that right?

10:31:00 14 **A** It's what the document says.

10:31:02 15 **Q** So this is an obligation that Walmart has entered into  
10:31:05 16 on behalf of all of its pharmacies; is that correct?

10:31:09 17 **A** That's what the document says.

10:31:12 18 **Q** Now, the document goes on to say, under point C, that  
10:31:27 19 "Walmart shall implement and maintain policies and  
10:31:33 20 procedures designed to ensure that its pharmacies comply  
10:31:36 21 with all applicable laws."

10:31:38 22 Do you see where it says that?

10:31:41 23 **A** Yes, sir.

10:31:45 24 **Q** And the word "ensure," what do you understand that to  
10:31:50 25 mean in just your everyday parlance as someone who drives

10:31:54 1 compliance?

10:31:56 2 **A** It would mean to me that I should do what I can to get  
10:31:58 3 that information.

10:31:59 4 **Q** Okay?

10:32:00 5 **A** To make sure it's done.

10:32:02 6 **Q** Yeah. Ensure means kind of guarantee, ensure. Right?

10:32:11 7 **A** No, it does say that they shall try to comply with all  
10:32:16 8 the laws that require identification being given on people  
10:32:22 9 picking up prescriptions where laws apply.

10:32:23 10 **Q** Well, we've got a difference here.

10:32:27 11 It says "ensure," and you said "try to comply."

10:32:34 12 Do you think that by "ensure" that means try to  
10:32:39 13 comply?

10:32:39 14 **A** I believe it means try to comply with the laws and  
10:32:41 15 regulations of that particular area.

10:32:45 16 (Deposition playback stopped.)

10:32:45 17 MR. WEINBERGER: Your Honor, this is a good  
10:32:47 18 stopping point.

10:32:47 19 THE COURT: I was going to say, I was going to  
10:32:49 20 inquire.

10:32:50 21 Okay, ladies and gentlemen, we'll take our mid morning  
10:32:53 22 break, 15 minutes, and then pick up with some more of this  
10:32:55 23 testimony. Thank you.

10:33:46 24 (Recess taken at 10:33 a.m.)

10:53:14 25 (Jury present in open court at 10:53 a.m.)

10:53:15 1 THE COURT: Okay. Please be seated.

10:53:17 2 You can resume the deposition of Mr. Nelson.

10:53:23 3 MR. LANIER: Thank you, Your Honor.

10:53:28 4 **Q** We got a difference here. It says "ensure," and you  
10:53:38 5 said "try to comply."

10:53:40 6 Do you think that by "ensure" that means "try to  
10:53:43 7 comply"?

10:53:43 8 **A** It means try to comply with the laws and regulations  
10:53:48 9 of that particular area.

10:53:50 10 **Q** Huh. Okay.

10:54:01 11 The next subpoint says that "Walmart shall comply with  
10:54:06 12 all state and federal laws and regulations with regard to  
10:54:10 13 dispensing controlled substances based on a prescription  
10:54:13 14 written or otherwise transmitted by a prescriber located  
10:54:17 15 outside of the state where the patient and pharmacy are  
10:54:20 16 located."

10:54:21 17 Do you see that?

10:54:23 18 **A** Yes.

10:54:25 19 **Q** So in addition to ensure that its pharmacies comply  
10:54:33 20 with the applicable laws requiring pharmacists to obtain  
10:54:37 21 current identification from a person picking up the  
10:54:41 22 substance, it also says they shall comply with the state and  
10:54:44 23 federal laws and regulations with regard to dispensing these  
10:54:49 24 substances based on a prescription written by someone  
10:54:51 25 outside the state. Right?

10:54:53 1 **A** That's what the document says.

10:54:54 2 **Q** Then subpoint I, "Walmart shall institute policies and  
10:54:59 3 procedures to block the early refill of controlled  
10:55:04 4 substances."

10:55:04 5 Do you see that as well?

10:55:08 6 **A** I do.

10:55:08 7 **Q** So we would need to add to our list, policies and  
10:55:20 8 procedures to block early refills, right?

10:55:24 9 **A** Early refills of controlled substances.

10:55:27 10 **Q** Right. That's fair. That's what I'm referencing in  
10:55:32 11 this are the controlled substances.

10:55:33 12 All right. Now, we've got this in 2011, "this" being  
10:55:39 13 Plaintiffs' Exhibit 15.

10:55:45 14 And this memorandum of agreement was in place when you  
10:55:49 15 were driving compliance, wasn't it?

10:55:57 16 **A** It took effect after at a point after I became in that  
10:56:02 17 role.

10:56:04 18 **Q** So it was in -- you were driving compliance when this  
10:56:08 19 came into effect, fair?

10:56:09 20 **A** I was in the role of compliance, senior manager of  
10:56:14 21 Health and Wellness, Controlled Substance.

10:56:16 22 **Q** Okay. Now, during this period of time, there is an  
10:56:26 23 opioid epidemic that is raging across the country, fair?

10:56:37 24 **A** I would prefer to call it a drug abuse epidemic across  
10:56:42 25 the United Nation -- across the United States, of which

10:56:44 1 opioids were one of those items.

10:56:50 2 **Q** So you don't think that opioids are in any way  
10:56:53 3 particular problem themselves or -- what other drugs were  
10:56:58 4 causing this epidemic at that point?

10:57:04 5 **A** Well, opioids were certainly one of the drugs that  
10:57:07 6 would have been involved. So were illicit drugs causing  
10:57:12 7 drug abuse concerns. Drugs that don't have medical uses,  
10:57:17 8 such as heroin and cocaine, things along that line.

10:57:20 9 Methamphetamine, other items. And unfortunately,  
10:57:24 10 prescription medications were misused at times which  
10:57:27 11 contributed to a drug abuse epidemic. And opioids are  
10:57:30 12 certainly one of those items that was misused.

10:57:33 13 **Q** Yeah. Are you familiar with any of the concerns that  
10:57:36 14 there was an opioid epidemic all by itself? Opioids  
10:57:41 15 themselves amounted to an epidemic.

10:57:44 16 Did you know that?

10:57:45 17 **A** Well, as I stated, I prefer to call it a drug abuse  
10:57:49 18 epidemic because multiple drugs were being used, not just  
10:57:54 19 opioids.

10:57:54 20 **Q** Oh, I don't fuss that other drugs have been abused as  
10:57:57 21 well. But you can -- are you familiar with the idea of  
10:58:00 22 diluting a problem by not focusing on it?

10:58:05 23 **A** I don't think focusing on drug abuse as a epidemic is  
10:58:11 24 ignoring the opioid concerns.

10:58:13 25 **Q** Okay. So you'll grant me that the opioid concerns

10:58:15 1 were very important because opioids themselves were causing  
10:58:18 2 a lot of death that was needless and a lot of community  
10:58:22 3 problems that were needless all around the country in this  
10:58:29 4 time period, true?

10:58:31 5 **A** Opioids were one of those drugs. There were other  
10:58:33 6 drugs that were doing the same thing.

10:58:35 7 **Q** Yeah. And I'm all for dealing with all of them.  
10:58:39 8 But y'all weren't dispensing heroin, were you?

10:58:46 9 **A** Of course not, sir.

10:58:48 10 **Q** Y'all weren't selling methamphetamines, were you?

10:58:50 11 **A** No, sir, but precursors were being purchased at  
10:58:55 12 Walmart and other places as well which we had to protect  
10:58:59 13 against.

10:59:00 14 **Q** And I'm sure that's true.

10:59:02 15 Heavens, y'all weren't even selling pot, were you?

10:59:05 16 **A** I'm not aware of that, sir.

10:59:06 17 **Q** Not supposed to be selling it anyway.

10:59:07 18 But y'all were selling opioids, weren't you?

10:59:13 19 **A** We were dispensing opioids according to legitimate  
10:59:16 20 prescriptions when they were presented and the pharmacist  
10:59:21 21 exercised their professional judgment. When they decided  
10:59:23 22 that was a valid prescription, they would dispense the  
10:59:25 23 prescription.

10:59:26 24 **Q** Okay. "Dispense" is one word -- y'all were selling  
10:59:33 25 them. Y'all were making money off of them, weren't you?

10:59:35 1 **A** Well, when dispensing a drug, they do have to somehow  
10:59:39 2 pay for it, either through an insurance company or the  
10:59:42 3 patient pays for it directly.

10:59:43 4 **Q** In other words, Walmart wasn't just giving these out  
10:59:47 5 as a pro bono. This was something that Walmart was making a  
10:59:51 6 profit off of. They were selling it, right?

10:59:53 7 **A** I can't attest to whether or not they made a profit on  
10:59:57 8 every opioid prescription that was sold. I do not know  
10:59:59 9 that.

10:59:59 10 **Q** So what you and I have tried to go through in the  
11:00:02 11 process of this from my perspective are those situations  
11:00:07 12 where Walmart has put into writing some type of a settlement  
11:00:14 13 agreement pursuant to allegations that it had failed to  
11:00:16 14 follow the law, the regulation.

11:00:22 15 Are you tracking with me?

11:00:26 16 **A** Yeah, I don't know if Walmart wrote those documents or  
11:00:29 17 some other party wrote those documents, but those documents  
11:00:31 18 definitely talk about Walmart and the different compliance  
11:00:36 19 agencies.

11:00:36 20 **Q** All right. What I'd like to do now is shift gears and  
11:00:41 21 not talk about written-up failures but how many other  
11:00:47 22 failures we can see just looking through your files that  
11:00:51 23 were never brought to the attention, perhaps, of the drug  
11:00:56 24 enforcement people.

11:00:56 25 You with me?



11:01:00 1 In other words, we've looked at -- you know, I used  
11:01:03 2 the police car as an example. We looked at situations where  
11:01:10 3 in a sense you got written up, kind of like getting a  
11:01:13 4 ticket, though you pled not guilty and paid a fine.

11:01:18 5 I want to talk to you now about ones where you may not  
11:01:22 6 have had a police officer there, to use my speeding analogy.

11:01:28 7 Do you understand what I'm saying?

11:01:29 8 **A** Well, what I do believe is that the alleged failures,  
11:01:32 9 since they were agreed to as not being violations, I don't  
11:01:36 10 agree with them being failures. They were issues that were  
11:01:40 11 resolved and taken up with the regulatory agencies and  
11:01:44 12 Walmart and resolved.

11:01:45 13 So calling them alleged failures, they may have  
11:01:49 14 started out that way, but they didn't end up that way.

11:01:52 15 **Q** So what I want to do is I want to talk about some  
11:01:57 16 other failures, and I'll set it up by making sure we're  
11:01:59 17 clear of what Walmart knew back in the time where you had  
11:02:07 18 your job. And I'll do that beginning with Walmart 359.  
11:02:16 19 359.

11:02:17 20 If you will go to that. I'll mark it as Exhibit 18.

11:02:22 21 This is a March 4, 2011, Wal-Mart Stores, Inc., and  
11:02:30 22 Drug Enforcement Administration memorandum of agreement  
11:02:32 23 setting out the obligations and expectations.

11:02:38 24 Do you see that on the front at least?

11:02:46 25 **A** I do.

11:02:46 1 Q Slide 4. Walmart, at this point in time, the store  
11:02:50 2 itself, was familiar with the agreements that had been  
11:02:57 3 reached with the Department of Justice and the Drug  
11:03:03 4 Enforcement Administration, correct?

11:03:03 5 A I'm not sure who the audience was for this  
11:03:05 6 presentation. I haven't read that yet.

11:03:09 7 Q Okay. If you'll look at the front page, you can at  
11:03:12 8 least see that Susanne Hiland, Paul Beahm, and Andy Gottman  
11:03:21 9 were aware of it within Walmart, because they're talking  
11:03:26 10 about it.

11:03:27 11 Is that fair?

11:03:31 12 A Yes, those individuals would know.

11:03:33 13 Q All right. Now, then if we look at slide 4, there's  
11:03:39 14 awareness within the company that in 2009, November, the DEA  
11:03:43 15 began an enforcement action against Wal-Mart Stores,  
11:03:51 16 Incorporated, based on several allegations. True?

11:03:55 17 A Someone at Walmart knew that, that's for sure, yes.

11:03:58 18 Q All right. And those allegations were improper  
11:04:00 19 dispensing of controlled substances based on prescriptions  
11:04:09 20 written by out-of-state prescribers, right?

11:04:15 21 A That's what the document says.

11:04:16 22 Q It says, "Improper dispensing of controlled substances  
11:04:19 23 based on prescriptions not issued for a legitimate medical  
11:04:23 24 purpose."

11:04:27 25 Right?

11:04:27 1 **A** That's what it says.

11:04:29 2 **Q** "Improper dispensing of controlled substances to  
11:04:33 3 patients whom the pharmacists knew or should have known were  
11:04:38 4 diverting controlled substances."

11:04:40 5 Do you see that?

11:04:40 6 **A** I do.

11:04:43 7 **Q** "Use of expired, suspended, or invalid DEA numbers to  
11:04:51 8 fill prescriptions."

11:04:53 9 Do you see that?

11:04:54 10 **A** I do.

11:04:54 11 **Q** And finally, point 5, "An early refill of controlled  
11:04:59 12 substances."

11:04:59 13 You see that as well?

11:05:01 14 **A** I do.

11:05:02 15 **Q** Now, if you look at slide 6, there are obligations  
11:05:09 16 that are set out here as well on this Walmart presentation,  
11:05:17 17 correct?

11:05:17 18 **A** That's correct.

11:05:20 19 **Q** And the obligations start out with maintaining a  
11:05:25 20 compliance program that must be designed to detect and  
11:05:28 21 prevent diversion of controlled substances, right?

11:05:35 22 **A** That's what the document says.

11:05:36 23 **Q** That it's going to include procedures to identify  
11:05:39 24 signs of diversion, including, and then it gives some red  
11:05:44 25 flags, right?

11:05:44 1 **A** Well, they're not labeled as red flags.

11:05:51 2 **Q** Well, you and I know these to be red flags. Doctor  
11:05:55 3 shopping is a red flag, isn't it?

11:05:57 4 **A** In some circumstances, yes.

11:05:58 5 **Q** Early refills, a red flag.

11:06:01 6 You need to look carefully if there's an early refill,  
11:06:04 7 right?

11:06:04 8 **A** Yes, in some circumstances.

11:06:07 9 **Q** Altered and forged prescriptions. That's a red flag  
11:06:11 10 now, isn't it?

11:06:11 11 **A** It could be.

11:06:12 12 **Q** I mean, can you think of any time an altered and  
11:06:16 13 forged prescription is not a red flag?

11:06:17 14 **A** If you contact the prescriber and the prescriber says,  
11:06:19 15 yes, I'm the one who altered that prescription, then, yes,  
11:06:23 16 it wouldn't be a red flag. It would have been, but it would  
11:06:26 17 have been resolved by the pharmacist.

11:06:27 18 **Q** Yeah, I'm not saying it's an unresolvable red flag.  
11:06:32 19 I'm just saying it's a red flag. You don't just fill it.  
11:06:35 20 You need to at least check it out, right?

11:06:38 21 **A** In my opinion, a red flag is one that you can't  
11:06:40 22 resolve, but that's my opinion.

11:06:42 23 **Q** Okay. So if by red flag I mean it's something that  
11:06:44 24 you should check out, but it is a resolvable red flag, I'm  
11:06:48 25 using the word differently than you do.

11:06:50 1 Is that fair?

11:06:51 2 **A** That sounds accurate.

11:06:55 3 **Q** So we know that as of March 4 of 2011, at least some  
11:06:59 4 higher-ups within Walmart are aware of what's expected and  
11:07:05 5 obligated under the agreement with the Drug Enforcement  
11:07:10 6 Administration, true?

11:07:16 7 UNIDENTIFIED SPEAKER: Objection, form.

11:07:17 8 **A** If those individuals who are stated on this -- on page  
11:07:20 9 1 were actually in this presentation or webinar -- I don't  
11:07:23 10 know what the format was where this presentation was made.  
11:07:26 11 If they were actually there, then those people would have  
11:07:28 12 known. I don't know. I don't see a roll call or know that  
11:07:31 13 they were actually there, but they're listed as potential  
11:07:33 14 people because of the verbiage.

11:07:37 15 **Q** And it's very potential that this was a week later, a  
11:07:41 16 week earlier. I don't know the details. But somewhere  
11:07:42 17 around this time period, somebody prepared a slide that  
11:07:45 18 said, "This is Susanne Hiland, senior director of Regulatory  
11:07:52 19 Affairs. Thank you for joining me this afternoon. Joining  
11:07:54 20 me are Paul Beahm and Andy Gottman."

11:07:57 21 Do you see?

11:07:58 22 **A** I do see that.

11:08:01 23 **Q** All right. So within the framework of this, I want to  
11:08:05 24 now begin to walk through what Walmart did, starting in that  
11:08:11 25 area -- era of, you know, Walmart actions when you are on

11:08:23 1 the job.

11:08:23 2 You with me?

11:08:27 3 **A** I don't know yet. I understand what you're saying,  
11:08:29 4 but I don't know if I'm with you.

11:08:30 5 **Q** Have you got Exhibit 19 in front of you?

11:08:32 6 **A** I do.

11:08:33 7 **Q** All right. So this is an e-mail from you, sent  
11:08:41 8 February 2 of 2011, and talking about common signs of  
11:08:50 9 diversion in the pharmacy operation manual 1703 and 1311,  
11:08:55 10 right?

11:08:56 11 **A** That's what the document says.

11:08:59 12 **Q** All right. So what we know as of 2011 is you're  
11:09:06 13 writing and you're saying that "common signs associated with  
11:09:13 14 diversion" include doctor shopping, requests for early  
11:09:20 15 refills, and prescriptions written by doctors not licensed  
11:09:23 16 to practice in the jurisdiction where the patient's located.

11:09:25 17 Is that right?

11:09:29 18 **A** Again, it's what the document says.

11:09:31 19 **Q** That's what you said.

11:09:34 20 You wrote this, didn't you?

11:09:35 21 **A** My name is at the top of the document.

11:09:39 22 **Q** So do you think you wrote it or did someone else write  
11:09:42 23 your name?

11:09:42 24 **A** I don't have any reason to believe someone else wrote  
11:09:44 25 this.

11:09:45 1 Q All right. So you wrote to Susanne and said that  
11:09:49 2 you'd reviewed the POMs and that there were a few common  
11:09:53 3 signs of diversion that are spelled out in the memorandum of  
11:09:56 4 agreement but not mentioned in the POMs; is that right?

11:10:01 5 A It's what the document says.

11:10:02 6 Q That's what you said, right?

11:10:05 7 A Well, the only reason it gives me pause to say whether  
11:10:08 8 I wrote this or not is if you look at the "sent" line, it  
11:10:12 9 says it was 9:31 p.m., if you see at the top of the  
11:10:15 10 document.

11:10:16 11 Q Uh-huh?

11:10:17 12 A I'm not customarily working at 9:30 in the evening.  
11:10:20 13 So that's what gives me pause. And all those other names at  
11:10:23 14 the top there that I assume are redacted or changed in some  
11:10:26 15 fashion, I would never have sent an e-mail out with those  
11:10:30 16 type of recipients. I would have used the names. So that's  
11:10:33 17 the reason why I'm not familiar with this type of document.  
11:10:36 18 This can't be its original form.

11:10:38 19 Q So someone may have gotten into your e-mails and sent  
11:10:44 20 out an e-mail as Brad Nelson, Regulatory Affairs, senior  
11:10:51 21 manager, to basically the Listserv that's the Walmart home  
11:10:57 22 office recipients --

11:10:58 23 A Yeah, I'm not familiar with that list. I don't know  
11:11:02 24 that list.

11:11:02 25 Q Are you suggesting someone, like, fraudulently used

11:11:06 1 your name?

11:11:08 2 **A** I'm saying there's no way I would have written an  
11:11:10 3 e-mail with those "to" and "from" -- the "to" and "cc's" up  
11:11:16 4 there, I don't know who those people are or what that  
11:11:18 5 e-mail -- that distribution list or whatever that is. I  
11:11:21 6 would have had their names individually listed. So I  
11:11:23 7 don't -- I don't recognize that part up at the top.

11:11:26 8 Susanne I know, but I don't see her name on the "to."  
11:11:28 9 Do you see it up there? I don't see it in the address list.

11:11:31 10 So I don't know who that Walmart home office  
11:11:35 11 recipient/F0171A, so forth, I don't know who that is.  
11:11:42 12 That's not something I recognize.

11:11:43 13 **Q** All right. Well, somebody wrote under your name,  
11:11:47 14 whether it's you or someone else, "Susanne, upon review of  
11:11:53 15 both POMs" --

11:11:54 16 Now, let's be real clear. What's a POM?

11:11:59 17 **A** Pharmacy operations manual.

11:12:02 18 **Q** And that's something that's within Walmart. That's  
11:12:07 19 Walmart written, right?

11:12:07 20 **A** The operations manual is a Walmart document.

11:12:14 21 **Q** Okay. So we'll say that's Walmart's pharmacy  
11:12:18 22 operations manual.

11:12:18 23 Is that fair?

11:12:22 24 **A** That's what POM stands for.

11:12:26 25 **Q** Okay. So "Upon review of Walmart's pharmacy



11:12:31 1 operations manual 1703 and 1311, there are a few common  
11:12:33 2 signs of diversion that are spelled out in the MOA but not  
11:12:39 3 mentioned in the POMs."

11:12:40 4 Is that right?

11:12:45 5 **A** Well, I'd like to point out that at that time, those  
11:12:47 6 POMs were not published yet because the memorandum of  
11:12:50 7 agreement did not go into effect until March of 2017. So  
11:12:57 8 this would have been during the review process.

11:12:59 9 **Q** Okay. That's helpful.

11:13:02 10 So y'all didn't have -- y'all had been selling opioids  
11:13:11 11 for years and years and years, hadn't you?

11:13:13 12 **A** Well, Walmart had filled prescriptions for years and  
11:13:15 13 years and years, and certainly there are prescriptions that  
11:13:19 14 would have been controlled substances filled in there.

11:13:20 15 **Q** Okay. So are you telling us and telling the jury that  
11:13:24 16 y'all didn't have any type of pharmacy operations manual  
11:13:29 17 until the DEA got y'all in that agreement in 2011?

11:13:36 18 **A** No, I'm referring to the ones in this e-mail, 1703 and  
11:13:41 19 1311. Those POMs were not published at that time because  
11:13:45 20 they were related to the MOA.

11:13:48 21 **Q** So whatever your pharmacists were operating under as  
11:13:56 22 recently as 2011, they haven't been told that a few common  
11:14:01 23 signs of diversion include doctor shopping, requests for  
11:14:07 24 early refills, and prescriptions written by doctors not  
11:14:10 25 licensed to practice in the jurisdiction where the patient

11:14:12 1 is?

11:14:14 2 **A** I did not -- I did not say that. I said that these --  
11:14:17 3 this particular POM, 1703 and 1311, apparently were missing  
11:14:23 4 some information that needed to be included, in my opinion,  
11:14:27 5 before being published.

11:14:28 6 **Q** Okay. So if we're going to put a little timeline  
11:14:30 7 together here, you've taken the job, you said, in February  
11:14:34 8 of 2011? Is that right?

11:14:39 9 **A** Yup. Looks like my second day.

11:14:44 10 **Q** If you wrote it.

11:14:48 11 You take the job in 2011. Let's get down the road  
11:14:54 12 here.

11:14:54 13 And also in February, 2/2, you send an e-mail out  
11:15:03 14 about missing signs of diversion. Right?

11:15:11 15 **A** I sent an e-mail to my supervisor, and I don't  
11:15:13 16 recognize those other names on there or those other  
11:15:16 17 distribution lists, so I don't know who else was included on  
11:15:18 18 that e-mail.

11:15:18 19 **Q** All right. Now, if you'll keep going, let's pass on  
11:15:31 20 by Exhibit 19 and go to Walmart Exhibit 236, Tab 236, which  
11:15:45 21 I will mark as Exhibit Number 20.

11:15:51 22 The first e-mail is the one at the bottom dated  
11:15:57 23 February 27 at 9:48 a.m.

11:16:04 24 Do you have that in front of you?

11:16:05 25 **A** I do.

11:16:05 1 Q "Deputy Assistant Administrator Joseph Rannazzisi  
11:16:14 2 charged in the document that DEA officials met with CVS  
11:16:17 3 executives twice before about the increase in the volume of  
11:16:23 4 OxyContin prescriptions presented at two pharmacies, which  
11:16:28 5 far exceeded the norm."

11:16:30 6 Do you see that?

11:16:31 7 A That's what the document says.

11:16:38 8 Q And then the pertinent information I want to point to  
11:16:40 9 you is on the second page.

11:16:45 10 "'Employees there willfully ignored many typical red  
11:16:49 11 flags in filling prescriptions, even though they knew or  
11:16:55 12 should have known the drugs were not for medical purposes,'  
11:16:59 13 DEA alleged. "

11:17:00 14 Do you see where I'm reading?

11:17:01 15 A Yes, sir.

11:17:01 16 Q Now, y'all were still trying to get the red flags put  
11:17:08 17 into your manual; is that right?

11:17:09 18 A There was lots of other policies and procedures in  
11:17:11 19 place before that previous e-mail that we looked at about me  
11:17:15 20 stating that there are some things missing that need to be  
11:17:18 21 included on those two POMs.

11:17:22 22 Q Yeah, well --

11:17:23 23 A I can tell you which POMs were in place prior to this  
11:17:26 24 message that contained the information regarding red flags,  
11:17:29 25 using your word.

11:17:34 1 Q Well, you or whoever is writing e-mails under your  
11:17:39 2 name said, "Common signs associated with diversion that need  
11:17:43 3 to be added."

11:17:44 4 Y'all were missing some common signs, weren't you?

11:17:47 5 A In those two POMs before they were published, yes.

11:17:52 6 Q And then the next paragraph, do you see where it  
11:17:54 7 starts "The"?

11:17:56 8 A Yes, sir.

11:17:59 9 Q "'The company's efforts to curb the illegal practice  
11:18:04 10 have been reactionary and would not ensure that it would  
11:18:08 11 stop,' DEA officials said."

11:18:15 12 Do you see that?

11:18:16 13 A I can see what it says on the document, yes.

11:18:18 14 Q You know the difference between being reactive, where  
11:18:22 15 you're reacting, or being proactive, where you're actually  
11:18:26 16 acting ahead of time, don't you?

11:18:28 17 A In most situations, proactive is better than reactive.

11:18:32 18 Q Now, did you know that this is the *Holiday* case that  
11:18:36 19 you and I were talking about earlier that you said you  
11:18:38 20 hadn't heard of?

11:18:39 21 A No, sir, I would not have known that.

11:18:43 22 Q You took this and you sent this around to people,  
11:18:48 23 didn't you?

11:18:48 24 A I sent it to the colleagues that I worked with at the  
11:18:51 25 time, yes, sir, but I don't see anything about it saying

11:18:54 1 *Holiday* case on there.

11:18:57 2 **Q** Okay. That's fair.

11:18:57 3 Did you bother to look it up once you got this so that  
11:19:02 4 you could be sure and drive compliance in a good way?

11:19:04 5 **A** I believe we were already driving compliance in a  
11:19:08 6 favorable way at that time. That was nearly a year after  
11:19:12 7 the MOA was signed.

11:19:12 8 **Q** So are you telling me that, no, I did not look it up?

11:19:16 9 **A** I'm not -- did not look up what, sir?

11:19:19 10 **Q** You didn't look up this case and try to get more  
11:19:21 11 details about it?

11:19:21 12 **A** No, sir, I did not.

11:19:26 13 **Q** All right. So on 2/27, you're e-mailing about the CVS  
11:19:34 14 woes on red flags. Is that fair to say?

11:19:38 15 **A** Let's be sure we put 2012 on there.

11:19:47 16 **Q** Great point. Thank you.

11:19:50 17 **A** And I also want to point out at this time there was  
11:19:56 18 more than just Brad doing this role. People had joined the  
11:20:00 19 task force or joined that role with me.

11:20:03 20 **Q** Yeah. You finally got some help, didn't you?

11:20:07 21 **A** I don't know about "finally," but I was fortunate to  
11:20:12 22 get some additional resources, yes.

11:20:13 23 **Q** All right. So now let's go to Walmart 364, which I'm  
11:20:18 24 going to mark as Exhibit 21.

11:20:27 25 This is a press release that's dated September 12 of

11:20:30 1 2012.

11:20:32 2 Do you see that?

11:20:33 3 **A** I do.

11:20:36 4 **Q** And this press release -- let's see if I can make it a  
11:20:40 5 little bigger for you and the jury.

11:20:45 6 (Video playback interruption:)

11:20:45 7 MR. DELINSKY: Your Honor, may we go in side  
11:20:47 8 bar briefly?

11:20:57 9 (At side bar at 11:20 a.m.)

11:21:05 10 THE COURT: Okay.

11:21:06 11 MR. DELINSKY: Your Honor, I understand that  
11:21:07 12 the Court has admitted aspects of the *Holiday* case and CVS  
11:21:13 13 settlements over our objections, but this is getting  
11:21:15 14 gratuitous.

11:21:16 15 THE COURT: I thought all this was agreed to,  
11:21:19 16 these depositions?

11:21:20 17 MR. LANIER: It was, Your Honor, and Special  
11:21:23 18 Master Cohen ruled on this, and the time for appealing his  
11:21:23 19 rulings is long gone.

11:21:27 20 MR. DELINSKY: This is gratuitous. We're now  
11:21:27 21 looking at newspaper articles, we're looking at press  
11:21:29 22 releases.

11:21:30 23 THE COURT: Wait a minute. First of all,  
11:21:31 24 this -- I hear your objection, Mr. Delinsky, okay, it's way,  
11:21:36 25 way, way too late. This has all been dealt with, these

11:21:40 1 deposition excerpts, okay? You knew these were coming in a  
11:21:43 2 long time ago. So it's untimely, and, you know, there's  
11:21:48 3 been a lot of discussion about this, and it's fair game  
11:21:52 4 anyway because of this witness's position and what he knew  
11:21:59 5 about it and what he did or didn't do with respect to  
11:22:01 6 Walmart.

11:22:02 7 So it's overruled because it's untimely, and even if  
11:22:05 8 it were timely, I think I'd overrule it.

11:22:13 9 MR. DELINSKY: Well, Your Honor, we believe we  
11:22:15 10 did assert objections to this, but we just wanted it noted  
11:22:18 11 for the record.

11:22:18 12 THE COURT: Well, it's noted. I've overruled  
11:22:19 13 it for two reasons.

11:22:35 14 (End side bar at 11:22 a.m.)

11:22:39 15 **Q** This press release talks about the same thing, doesn't  
11:22:41 16 it? It is the two CVS retailers' DEA case. Same case,  
11:22:45 17 right.

11:22:46 18 **A** I don't know if it's the same case or not. I didn't  
11:22:52 19 read that entire first document that you gave to us about  
11:22:54 20 the *Holiday* situation. I didn't know if it had more stores  
11:22:57 21 or less stores involved than this. This appears to be new  
11:23:01 22 stores as well, so I'm assuming it's not the same.

11:23:03 23 **Q** Huh. Well, without unnecessarily fussing with you, on  
11:23:16 24 February 4 the DEA served an immediate suspension order at  
11:23:19 25 *Holiday*.

11:23:19 1 Do you see that?

11:23:20 2 **A** I do.

11:23:21 3 **Q** And that's the store on Orlando Drive.

11:23:26 4 Do you see that as well?

11:23:27 5 **A** I do see that.

11:23:28 6 **Q** And then one on West First Street.

11:23:31 7 Do you see that as well?

11:23:32 8 **A** That's correct.

11:23:32 9 **Q** And Exhibit 20, which you and I have just been

11:23:36 10 discussing, the previous one that talked about Joe

11:23:38 11 Rannazzisi, two CVS stores on Orlando Drive and West First

11:23:43 12 Street.

11:23:47 13 See that?

11:23:48 14 **A** Yes, that paragraph does reference the first e-mail we  
11:23:50 15 talked about, yes.

11:23:51 16 **Q** Okay. Great. So now we've got it, and now you do  
11:23:57 17 know it's the *Holiday* case.

11:23:59 18 You see that?

11:24:00 19 **A** That would not have been a key takeaway from me, no.

11:24:06 20 I see it says that, but that would not have been a takeaway  
11:24:09 21 for me to know it was called *Holiday CVS*.

11:24:12 22 **Q** Well, it's not just there, it's throughout here. It  
11:24:15 23 talks about the hearing in front of the ALJ, administrative  
11:24:27 24 law judge. It talks about the evidence during the hearing.

11:24:28 25 It says that the final order was issued and denies any



11:24:33 1 pending applications of Holiday and gives the name again.

11:24:38 2 Do you see that?

11:24:40 3 UNIDENTIFIED SPEAKER: Objection. Form.

11:24:43 4 **A** Yes, sir, I do see that, but the name of the pharmacy  
11:24:47 5 would not have been what I was focusing on. I was focusing  
11:24:49 6 on the issues at hand.

11:24:52 7 **Q** Well, I'm just wondering, when you sent an e-mail out  
11:24:56 8 that said, "Looks like the DEA made a statement here" -- you  
11:25:04 9 see that?

11:25:06 10 **A** Yes, sir.

11:25:07 11 **Q** I'm just wondering if when you knew the DEA made a  
11:25:11 12 statement, if you bothered to go read it.

11:25:13 13 **A** I read the press release from the DEA. That's what  
11:25:16 14 this item is that I forwarded out.

11:25:18 15 **Q** Did you read the case? Did you do any investigation  
11:25:22 16 beyond reading a press release and sending it out?

11:25:26 17 **A** I read this press release and forwarded it to my  
11:25:30 18 supervisors.

11:25:31 19 **Q** Did you do anything else to investigate what had  
11:25:36 20 happened and what had gone wrong?

11:25:37 21 **A** Not that I recall.

11:25:41 22 **Q** Do you recall doing anything that would have led you  
11:25:46 23 to learn about those red flags that were in the *Holiday*  
11:25:52 24 case, Exhibit 11, that we looked at before lunch?

11:25:57 25 **A** As I recall, sir, we talked before lunch about this

11:26:01 1 case and said that that was Professor Doering's example of  
11:26:05 2 what red flags were in those particular instances.

11:26:07 3 Red flags exist, but they're different in each  
11:26:12 4 circumstance.

11:26:12 5 **Q** Well, that's what Professor Doering said were red  
11:26:16 6 flags pertaining to the distribution of the opioids.

11:26:19 7 I'm just asking if you went to research it to find out  
11:26:24 8 what was the problem here.

11:26:26 9 **A** Not that I recall.

11:26:27 10 **Q** That's part of your job, though, wasn't it?

11:26:35 11 **A** I don't recall seeing that in the job description, to  
11:26:38 12 read DEA cases against other pharmacies.

11:26:40 13 **Q** No, the job description isn't that specific, but that  
11:26:45 14 doesn't change the requirements.

11:26:49 15 I mean, you know, they don't -- your job description  
11:26:52 16 was to -- go back to Exhibit 2.

11:26:56 17 Your job description includes driving compliance with  
11:27:04 18 federal and state regulatory requirements, doesn't it?

11:27:07 19 **A** Well, the good news was, at this point in September of  
11:27:13 20 2012, I had additional colleagues to help me, and there was  
11:27:15 21 another one on the way. So it wasn't just me.

11:27:18 22 **Q** So you didn't have to do it, someone else could?

11:27:25 23 **A** No, I had additional support to do it.

11:27:26 24 **Q** I mean, you -- but you hired onto this job. You  
11:27:31 25 applied for it. You were getting paid and bonused for it,

11:27:35 1 right?

11:27:35 2 **A** As were other colleagues of mine doing the same thing.

11:27:39 3 **Q** I mean, part of what you were supposed to be doing  
11:27:43 4 included communicating additional information requested from  
11:27:47 5 regulatory agencies.

11:27:50 6 So you had to have some kind of relationship with the  
11:27:52 7 DEA, didn't you?

11:27:53 8 **A** Not with regard to their ongoing cases that they had  
11:27:58 9 filed against other people or even settlements.

11:28:00 10 **Q** Who's the biggest drugstore out there in the U.S.  
11:28:04 11 writing prescriptions -- I mean filling prescriptions when  
11:28:08 12 you were working for Walmart?

11:28:09 13 **A** In 2017, I'm not sure. I'm not sure which one was the  
11:28:16 14 top dog at that point.

11:28:17 15 **Q** Well, you got to have -- Walmart's up there near the  
11:28:20 16 top at least, isn't it?

11:28:21 17 **A** I don't recall where Walmart fell. I just don't.

11:28:26 18 **Q** There's no excuse for Walmart not to be on top of its  
11:28:30 19 game and know what other pharmacies know, true?

11:28:33 20 **A** I have no idea how Walmart would know what other  
11:28:37 21 pharmacies know.

11:28:38 22 **Q** All right. Pull out, please, Walmart 107. We'll mark  
11:28:42 23 it as Exhibit 23.

11:28:55 24 From Brad Nelson to Caroline Riogi and Shelley  
11:29:04 25 Tustison -- I don't know how to say her name -- sent March

11:29:13 1 of 2013.

11:29:13 2 Do you see that?

11:29:14 3 **A** I do.

11:29:16 4 **Q** Do you think you wrote this one?

11:29:18 5 **A** Well, again, it's at 9:55 at night, so nearly 10 p.m.

11:29:25 6 That was not normal time to conduct business. So, I mean,

11:29:28 7 again, I have no reason to believe that this isn't from me

11:29:30 8 to Shelley and Caroline.

11:29:36 9 **Q** Yeah, I mean, because you said before you didn't think

11:29:39 10 it was you because of the time signature. This is another

11:29:41 11 one where you're writing pretty late if it's you, right?

11:29:44 12 **A** I'm sorry, I didn't hear that.

11:29:45 13 **Q** I said -- you said before you didn't think it was

11:29:50 14 your -- you because of the time signature, but this one is

11:29:54 15 another one where you're -- if it's you, you're writing

11:29:57 16 pretty late, right?

11:30:03 17 **A** I agree.

11:30:03 18 **Q** Now, this says, "I would encourage you" -- "I would

11:30:11 19 encourage you to review these pharmacy operation manual

11:30:20 20 forms. Pharmacists are granted the ability to exercise

11:30:25 21 their professional judgment and choose to refuse to fill any

11:30:27 22 prescription if they feel the prescription was written for

11:30:35 23 other than a legitimate medical purpose."

11:30:37 24 Did I read that right?

11:30:39 25 **A** That's what the document says.

11:30:40 1 Q Now, "granted the ability" is actually not just  
11:30:47 2 granted the ability. They're supposed to not fill a  
11:30:52 3 prescription if they think it's written for other than a  
11:30:54 4 legitimate medical purpose. It's not optional, is it?

11:30:58 5 A No, it states there they're given the ability to  
11:31:02 6 exercise their professional judgment and refuse to fill a  
11:31:04 7 prescription. So stating there they can do that.

11:31:06 8 Q Well, yeah, I know they can. They're supposed to do  
11:31:08 9 that though. That's like -- that's the difference between  
11:31:10 10 telling my kid, hey, you can make up your bed, or you're  
11:31:14 11 supposed to make up your bed.

11:31:16 12 Those are two different things, aren't they?

11:31:19 13 A I don't understand what you're getting at. This says  
11:31:21 14 they are granted the ability to exercise their professional  
11:31:23 15 judgment and refuse to fill any prescription.

11:31:24 16 Q Well, my kids are too old for me to tell that to, so  
11:31:29 17 let me come up with a different illustration, okay?

11:31:32 18 Did you ever teach any of your kids how to drive a  
11:31:35 19 car?

11:31:35 20 A Yes, sir.

11:31:36 21 Q Did you give them the ability to drive it below the  
11:31:43 22 speed limit, or did you instruct them to drive it below the  
11:31:49 23 speed limit?

11:31:49 24 A I don't know that that's the same situation. There's  
11:31:56 25 not professional judgment involved in that, and no back and

11:32:00 1 forth between -- it's not the same situation. I do -- this  
11:32:04 2 says that they're granted the ability to exercise their  
11:32:06 3 professional judgment and choose not to fill a prescription  
11:32:11 4 if they feel the prescription was written for other than a  
11:32:14 5 legitimate purpose.

11:32:14 6 **Q** And I'm suggesting to you if they think it's written  
11:32:18 7 for other than a legitimate purpose, they're supposed to  
11:32:21 8 find out, and if they can't find out, they're not supposed  
11:32:26 9 to fill it at all.

11:32:27 10 You disagree with me?

11:32:29 11 **A** I would not fill a prescription if it was me that I  
11:32:34 12 felt was for other than a legitimate purpose. I just want  
11:32:37 13 to make sure that the pharmacists know that they have that  
11:32:40 14 ability at Walmart.

11:32:41 15 **Q** Well, sir, you're in charge of driving their  
11:32:43 16 compliance with this regulatory requirements.

11:32:50 17 Shouldn't you be telling them that if they don't think  
11:32:54 18 it's written for a legitimate medical purpose, it's not, ah,  
11:33:01 19 they could choose to exercise their judgment and not fill  
11:33:04 20 it, it's don't fill it until you decide if it's right,  
11:33:08 21 correct?

11:33:08 22 **A** So again, as -- I don't want to be misrepresented. I  
11:33:12 23 was not the only person at this time doing that job.  
11:33:15 24 Shelley and Caroline were my counterparts who did the same  
11:33:19 25 thing. We had the country split up into geographical areas.

11:33:23 1 This e-mail was just to let them know that this was  
11:33:27 2 guidance that was being sent out when a pharmacist would ask  
11:33:30 3 a question about refusal to fill.

11:33:34 4 **Q** Yet these are the two people that Walmart had hired to  
11:33:37 5 help you, right?

11:33:37 6 **A** These are the two people that Walmart hired to do the  
11:33:39 7 same job as me.

11:33:40 8 **Q** Well, you're telling them -- I mean, look, you're  
11:33:44 9 telling them -- you're e-mailing them and saying, "I would  
11:33:50 10 encourage you to review these." You're telling them  
11:33:54 11 pharmacists are granted the ability.

11:33:58 12 You're teaching them, aren't you?

11:33:59 13 **A** This e-mail was an e-mail that I sent to Shelley and  
11:34:03 14 Caroline for their review to see if they agreed that this  
11:34:08 15 was the common verbiage that we should all three use when  
11:34:11 16 addressing pharmacists that have questions about refusal to  
11:34:16 17 fill.

11:34:19 18 This was not training Caroline and Shelley. This was  
11:34:22 19 giving them information that I proposed we should use to  
11:34:25 20 send out when they asked -- when pharmacists asked questions  
11:34:30 21 about refusal to fill.

11:34:34 22 **Q** Now, with due respect, I want to put that to the test.  
11:34:40 23 Okay?

11:34:41 24 Look at the rest of this and see if it bears up what  
11:34:44 25 you're saying.

11:34:45 1 First of all, Caroline and Shelley, probably wonderful  
11:34:49 2 people, but to be clear, they're both under the age of 30 at  
11:34:53 3 this point in time, right?

11:34:55 4 **A** Well, with all due respect, Ms. Shelley Tustison was  
11:34:59 5 actually doing this job before I applied for this and was  
11:35:02 6 given it.

11:35:05 7 **Q** Okay. So she's still under -- under the age of 30,  
11:35:08 8 was my question, right?

11:35:09 9 **A** I don't know what their -- I don't know what their  
11:35:12 10 ages were at that time.

11:35:12 11 **Q** Okay. That's fair, and it's probably something I'm  
11:35:15 12 being nosy about.

11:35:17 13 I'm just saying they hadn't had decades in the  
11:35:20 14 pharmaceutical field like you had, right?

11:35:22 15 **A** None of us had a lot of experience in the regulatory  
11:35:26 16 affairs area. We were all new to that space.

11:35:28 17 **Q** Yeah, I agree.

11:35:31 18 All right. You told them, "Pharmacists are granted  
11:35:35 19 the ability to exercise their judgment."

11:35:39 20 And then you continue to say, "Even after the  
11:35:42 21 pharmacists establish that there's a doctor-patient  
11:35:46 22 relation, the pharmacist is still allowed to refuse to fill  
11:35:49 23 a prescription on an individual prescription basis. No  
11:35:52 24 blanket refusals are allowed by boards of pharmacy."

11:36:00 25 Do you see where you said that?



11:36:02 1 **A** That is correct.

11:36:02 2 **Q** Where on Earth did you get that idea, that no blanket  
11:36:06 3 refusals are allowed by the boards of pharmacy?

11:36:15 4 **A** I don't know that I got that idea anyplace. I don't  
11:36:21 5 recall.

11:36:21 6 **Q** I mean, you say that over and over, month after month,  
11:36:23 7 year after year in e-mails, telling people that no blanket  
11:36:28 8 refusals are allowed by the boards of pharmacy.

11:36:31 9 Where on Earth do you get a basis for saying that?

11:36:34 10 **A** That was the guidance that was being given at the  
11:36:36 11 time.

11:36:36 12 **Q** By who?

11:36:37 13 **A** By all of us.

11:36:40 14 **Q** No. Who told you that no blanket refusals are allowed  
11:36:44 15 by boards of pharmacy? Who told you that?

11:36:48 16 **A** I honestly can't recall anybody specifically telling  
11:36:50 17 me that.

11:36:51 18 **Q** Where did you come up with it?

11:36:54 19 **A** I don't know that I came up with it. I just know that  
11:36:58 20 was the guidance that was being given at that time.

11:37:01 21 **Q** That was the guidance you were giving.

11:37:03 22 Did you make it up?

11:37:04 23 **A** I think I just said, I didn't make it up. That was  
11:37:08 24 the guidance that was being given at that time, so that was  
11:37:10 25 the guidance I gave out to people.

11:37:12 1 Q You continued to tell these people who were helping  
11:37:16 2 you out in this job now, "Feel free to give me a call, and  
11:37:20 3 I'll be happy to discuss your concerns. Unfortunately,  
11:37:23 4 there are many prescribers that write for large quantities  
11:37:27 5 of controlled substances; however, this does not mean that  
11:37:32 6 you as a professional are required to fill these  
11:37:35 7 prescriptions.

11:37:37 8 "Walmart encourages and supports the pharmacist in  
11:37:39 9 exercising their professional judgment. We simply ask that  
11:37:42 10 you follow the policies and procedures outlined in the  
11:37:46 11 pharmacy operations manual to protect you and the company  
11:37:51 12 from false claims of discrimination from the prescriber or  
11:37:55 13 the patient. We appreciate your concerns and understand the  
11:37:59 14 impact to your practice. Let us know how we can help."

11:38:02 15 That's the way you end it, right?

11:38:04 16 A Again, I want to remind you that this was not sent for  
11:38:07 17 Caroline and Shelley's education. This was sent for their  
11:38:12 18 review to see how they agreed with the verbiage that was  
11:38:16 19 going to be sent out to pharmacists who had sent e-mails in  
11:38:19 20 asking for guidance on, what should I do with a prescription  
11:38:24 21 I don't want to fill.

11:38:25 22 Q Where does it say that? Where do you say, would you  
11:38:28 23 please review this and give me your input?

11:38:31 24 A I would say that's probably an e-mail that was sent  
11:38:34 25 prior to this one.

11:38:34 1 Q Because this one doesn't say it, does it?

11:38:38 2 A No, but I can assure you that that's what this e-mail  
11:38:40 3 is in regards to.

11:38:42 4 Q All right. So 3/26/13 is you saying no blanket  
11:38:46 5 refusals are allowed.

11:38:48 6 A That was not me saying that. That is information that  
11:38:53 7 was taken out of the POMs.

11:38:57 8 Q I thought you were in charge of the POMs on this  
11:39:03 9 stuff.

11:39:03 10 A No, sir, I was not responsible for writing the POMs.

11:39:05 11 Q Were you responsible for making sure they were right?

11:39:09 12 A I was responsible to make sure they were communicated  
11:39:12 13 out to the field.

11:39:13 14 Q And that they were right?

11:39:15 15 A That was not my responsibility, to ensure that POMs  
11:39:18 16 were written correctly.

11:39:18 17 Q Well, you were supposed to oversee the company's  
11:39:23 18 policies.

11:39:24 19 Isn't POM a policy?

11:39:25 20 A There was processes in place to review POMs before  
11:39:28 21 they were published.

11:39:29 22 Q That wasn't my question.

11:39:31 23 Your job description, Exhibit 2, was to oversee the  
11:39:36 24 company's policies.

11:39:39 25 Do you see that?

11:39:39 1 **A** Again, at this point, I was not the only person doing  
11:39:42 2 this job.

11:39:42 3 **Q** Not my question, sir.

11:39:45 4 You applied for, and you said you were qualified, and  
11:39:49 5 you got a job to oversee the company's policies and  
11:39:53 6 assessments related to controlled substances by analyzing  
11:39:57 7 state and federal guidelines to ensure the company's  
11:40:00 8 programs met them.

11:40:05 9 Do you see that?

11:40:05 10 **A** Again, there was two other people that applied for the  
11:40:08 11 same position and were also helping oversee company policies  
11:40:11 12 and assessments.

11:40:14 13 **Q** Yeah, they were the people you wrote to and told them  
11:40:17 14 no blanket refusals are allowed.

11:40:19 15 And you're -- right?

11:40:22 16 **A** No, they are people that were included on an e-mail  
11:40:24 17 string, but I was not training them. I was giving them  
11:40:27 18 information about verbiage that we could send out so we were  
11:40:31 19 sending out consistent information.

11:40:35 20 **Q** Uh-huh. And so you e-mail out, no blanket refusals  
11:40:38 21 are allowed by boards of pharmacy, and you can't tell me one  
11:40:42 22 Board of Pharmacy that said that, can you?

11:40:44 23 **A** I certainly don't know what all boards of pharmacy say  
11:40:48 24 about that topic.

11:40:49 25 **Q** All right. Next go to Walmart 18. I'm going to mark

11:40:53 1 Walmart 18 as Exhibit Number 24.

11:41:05 2 Do you have it in front of you?

11:41:09 3 **A** Yes, sir.

11:41:10 4 **Q** Now, this is a document that's dated July 9 of 2013,  
11:41:18 5 and it's an update on order monitoring and retailer due  
11:41:24 6 diligence at a CPPC meeting.

11:41:26 7 Do you know what that stands for?

11:41:30 8 **A** I do not recall.

11:41:32 9 **Q** All right. It's dated July 9 of 2013, and it's by --  
11:41:38 10 or it's got on the title slide, "Steve Seid, executive  
11:41:45 11 director, National Accounts and Trade Relations."

11:41:47 12 Do you see that?

11:41:51 13 **A** I do.

11:41:51 14 **Q** I will represent to you that we pulled this document  
11:41:53 15 out of Purdue Pharma's internal files.

11:42:01 16 Do you know who Purdue Pharma is?

11:42:03 17 **A** A drug manufacturer, as I recall.

11:42:06 18 **Q** Made OxyContin, one of the largest selling opioids in  
11:42:12 19 history, right?

11:42:12 20 **A** I know that was one of the drugs they manufactured,  
11:42:16 21 yes.

11:42:17 22 **Q** Now, did you know that Purdue Pharma, the manufacturer  
11:42:29 23 of that drug was in contact with senior management at  
11:42:34 24 Walmart?

11:42:34 25 **A** I was not aware of that.

11:42:38 1 Q Did you ever become aware of the fact that Purdue  
11:42:41 2 Pharma was setting contacts with Walmart and working on  
11:42:46 3 marketing with pharmacists at Walmart?

11:42:54 4 A I'm not aware of that.

11:42:55 5 Q Would it have bothered you as the person in charge --  
11:43:02 6 or as one of the compliance people, driving compliance,  
11:43:08 7 would it have bothered you to know that the manufacturer of  
11:43:13 8 one of those drugs was meeting with senior management in  
11:43:16 9 regards to the sale and marketing of the drugs?

11:43:21 10 A That was certainly not my role, to be involved in  
11:43:25 11 marketing of prescription medications.

11:43:27 12 Q I mean, how does a manufacturer -- how does a  
11:43:33 13 pharmacist, for that matter, market a drug that's only  
11:43:38 14 written by prescription?

11:43:40 15 A I honestly don't know.

11:43:42 16 Q All right. Pull out Walmart 366, please. We'll mark  
11:43:44 17 it as Exhibit 25.

11:43:46 18 Okay. It's an e-mail chain, so I'm going to read it  
11:43:49 19 with you. We're going to start at the bottom of the second  
11:43:51 20 page.

11:44:02 21 There's an e-mail from Neil Desautels to Lurene Riel.  
11:44:10 22 And I don't know what any of that is talking about.

11:44:12 23 Do you see where I'm referencing?

11:44:16 24 A I do, and I agree. I don't know what it's talking  
11:44:18 25 about either.

11:44:19 1 Q All right. We're on the same page.

11:44:24 2 But I start to get it when Lurene writes to you and

11:44:29 3 Rick Irby, July 15 of 2013.

11:44:32 4 Do you see that?

11:44:36 5 A Yes.

11:44:36 6 Q "This is an update for addresses that this medical  
11:44:44 7 doctor is writing out of. I just sent an e-mail to you both  
11:44:46 8 about this doctor being under investigation."

11:44:49 9 Do you see that?

11:44:55 10 A Okay. I do.

11:44:56 11 Q Then you write back to Lurene, and this now we're on  
11:45:00 12 the first page.

11:45:03 13 You said, "Lurene, here is some information you can  
11:45:07 14 share with your stores regarding refusal to fill and  
11:45:11 15 professional judgment. Only pharmacists are granted the  
11:45:17 16 ability to refuse to fill for professional reasons, not the  
11:45:21 17 permit holders or home office. There are plenty of doctors  
11:45:26 18 and pharmacies under investigation, including Walmart. I  
11:45:32 19 would not want patients to stop bringing their prescriptions  
11:45:35 20 to Walmart because of an investigation by the state board or  
11:45:40 21 other regulatory agency. If the public were in danger, the  
11:45:45 22 DEA would suspend the prescriber's DEA registration or the  
11:45:51 23 state medical board would step in and suspend their medical  
11:45:53 24 license.

11:45:55 25 "Until one of those two events happen, then the

11:45:58 1 pharmacists must execute their professional judgment when  
11:46:01 2 they get prescriptions from prescribers with questionable  
11:46:05 3 prescribing habits.

11:46:07 4 "This is not the first time some of our competition  
11:46:10 5 have sent letters to prescribers or their stores about  
11:46:13 6 refusing all prescriptions from a particular prescriber for  
11:46:18 7 controlled substances. Walmart will not be send [sic] such  
11:46:24 8 a letter due to the reasons stated below [sic]. Only the  
11:46:28 9 pharmacist is granted the professional judgment right to  
11:46:31 10 refuse a prescription, not the permit holder."

11:46:39 11 Do you see that?

11:46:39 12 **A** Yes.

11:46:39 13 **Q** Where do you get that idea from, that Walmart can't  
11:46:42 14 send out a "nobody can fill prescriptions by this doctor"  
11:46:46 15 order?

11:46:47 16 **A** Again, I don't know exactly where that came from, but  
11:46:49 17 I can assure you that that was the direction it would have  
11:46:53 18 been sent out at that time. If that were incorrect  
11:46:55 19 information, either Caroline Riogi or Rick Irby, which was  
11:46:59 20 her supervisor who supervised this store and Lurene Riel,  
11:47:03 21 would have stepped in and said that's not accurate  
11:47:05 22 information, and that did not happen.

11:47:06 23 **Q** Actually, what Caroline Riogi said was thank you. She  
11:47:11 24 appreciated you telling her that.

11:47:12 25 Do you see that?



11:47:13 1 **A** I don't believe that's what the intent of the "thank  
11:47:16 2 you, Brad" was. I think it was thank you for responding to  
11:47:19 3 this situation.

11:47:19 4 **Q** So you've got now -- what was the date on that one,  
11:47:33 5 sir? Your e-mail? 7/15/13?

11:47:35 6 **A** That's the date, yes, sir.

11:47:46 7 **Q** And you're e-mailing out that the -- how did you say  
11:47:51 8 it? Walmart cannot issue -- the stores can't issue a refuse  
11:47:58 9 to fill? Or the company can't? Let's get it just right.

11:48:06 10 UNIDENTIFIED SPEAKER: Objection.

11:48:08 11 **Q** Permit holders, the home office, cannot issue a refuse  
11:48:12 12 to fill. Right?

11:48:17 13 **A** Yeah, that's what the document says.

11:48:19 14 **Q** What you said in the document, right?

11:48:21 15 **A** That's what the e-mail says.

11:48:25 16 **Q** Yeah, but that's your e-mail that says it. There's a  
11:48:28 17 bunch of e-mails on there. Yours is the one that said that,  
11:48:31 18 right?

11:48:31 19 **A** My e-mail includes reference to that, yes.

11:48:34 20 **Q** If we continue with Plaintiffs' 367, which is the  
11:48:39 21 other one I asked you to pull out, it is another e-mail from  
11:48:42 22 Scott Ortolani to you, August of 2013.

11:48:53 23 All right. Well, let's read it together.

11:48:56 24 "Good morning."

11:48:57 25 This is an e-mail to you.

11:48:58 1 "I spent part of yesterday with an inspector, and he  
11:49:02 2 wanted to give me a heads up that the inspectors  
11:49:07 3 collectively feel Walmart is starting to become a funnel  
11:49:11 4 with C-IIs due to more liberal policy on dispensing pain  
11:49:20 5 meds."

11:49:22 6 Do you see where I've highlighted that?

11:49:24 7 **A** I see that.

11:49:25 8 **Q** C-IIs, those are controlled substances, level II.  
11:49:30 9 That would include opioids, right?

11:49:35 10 **A** Opioids -- most opioids are C-IIs.

11:49:39 11 **Q** Yeah. "Walmart is starting to become a funnel."

11:49:49 12 In other words, all the prescriptions are starting to  
11:49:51 13 go to Walmart. Is that the way you understand that?

11:49:54 14 **A** Apparently, that was this person's opinion, yes.

11:49:57 15 **Q** I mean, this is -- the idea is all of those  
11:50:01 16 prescriptions start funneling down and going to Walmart,  
11:50:09 17 right?

11:50:12 18 **A** Again, I don't know who this person was, what the  
11:50:14 19 inspector's name was, but that was their opinion.

11:50:16 20 **Q** All right. So Walmart, a funnel.

11:50:20 21 And what's the date on this?

11:50:21 22 **A** It says August of -- August 7 of 2013.

11:50:28 23 **Q** And if we look at this, it says, "i.e.," in other  
11:50:36 24 words, kind of like "in other words," "King Soopers,  
11:50:46 25 Walgreens, Safeway, and Target all have algorithms" --

11:50:53 1 You see that?

11:50:53 2 **A** That's what the document says.

11:50:56 3 **Q** Right -- "algorithms that determine whether or not  
11:51:02 4 they'll dispense a C-II."

11:51:03 5 Did your company not have an algorithm?

11:51:05 6 **A** I'm not familiar with an algorithm.

11:51:08 7 **Q** All right. So we'll add that to it. Walmart a funnel  
11:51:13 8 and no algorithm.

11:51:14 9 It says, "Walgreens and Kings are required to check  
11:51:22 10 PMP on all oxys and hydromorphone medication."

11:51:30 11 Was Walmart not requiring their physicians to check  
11:51:33 12 the PMPs?

11:51:34 13 **A** I'm unaware of Walgreens' or King Soopers' policies  
11:51:38 14 with regard to PMP on oxy or hydro. I don't know anything  
11:51:43 15 about it.

11:51:43 16 **Q** What about Walmart? Did Walmart require your  
11:51:45 17 pharmacists to check PMPs?

11:51:48 18 **A** Yes, sir.

11:51:48 19 **Q** In 2013, that was a requirement?

11:51:51 20 **A** I believe we had a POM that stated that if you were  
11:51:54 21 going to dispense oxycodone 30, that you had to check the  
11:51:59 22 PMP.

11:52:00 23 **Q** All right. And that is true for all the other opiates  
11:52:02 24 as well?

11:52:03 25 **A** Not all opiates, no.

11:52:05 1 Q I'm sorry, you said -- I said, "Is that true for all  
11:52:08 2 of the opiates." And what was your answer?

11:52:11 3 A My answer was, not all controlled substance  
11:52:14 4 prescriptions had to be checked on PMP. It was up to the  
11:52:19 5 pharmacist's discretion to use their professional judgment  
11:52:22 6 on which ones they wanted to look at and why.

11:52:24 7 Q So they could fill opiates without doing the PMP check  
11:52:30 8 at this point in time, "they" being the Walmart pharmacists,  
11:52:34 9 right?

11:52:34 10 A Not all states had their PMP up and active at that  
11:52:37 11 time, so states that did have their PMP active, the  
11:52:40 12 pharmacists were supposed to check on oxy 30 prescriptions  
11:52:45 13 and any other prescriptions they needed to satisfy concerns  
11:52:48 14 about professional judgment issues.

11:52:51 15 Q Yeah, no, this says check PMP on all Oxys, not just  
11:52:56 16 oxy 30, and hydromorphone.

11:52:59 17 Did Walmart have the requirement that all Walmart  
11:53:02 18 pharmacists check PMPs on all Oxys and hydromorphone?

11:53:11 19 A Not that I recall.

11:53:12 20 Q Okay. And PMP stands for what?

11:53:13 21 A As stated earlier, it's usually prescription  
11:53:16 22 monitoring program.

11:53:23 23 Q And that does what? Give the jury a sample of what a  
11:53:26 24 prescription monitoring program would typically do.

11:53:28 25 A The pharmacy portion of a prescription monitoring

11:53:30 1 program was to transmit filled -- filled prescriptions for  
11:53:37 2 controlled substances to a database at the state, and then  
11:53:40 3 the state would compile them and make them available to  
11:53:42 4 prescribers and to other pharmacies.

11:53:46 5 **Q** This e-mail to you ends with, "I know, Brad, you're  
11:53:50 6 mindful of this but wanted to let you know what the rumors  
11:53:54 7 are from the Board."

11:53:56 8 Do you see that?

11:53:57 9 **A** I do.

11:53:58 10 **Q** Then you sent this on to Shelley with an FYI, correct?

11:54:06 11 **A** That is correct, because Shelley and -- Shelley  
11:54:15 12 supervised that area in Colorado. I did not have that area  
11:54:18 13 as my supervision.

11:54:19 14 **Q** No recommendation things be done differently or  
11:54:23 15 anything like that. Just an FYI, right?

11:54:25 16 **A** I think the e-mail speaks for itself.

11:54:27 17 **Q** All right. And then let's roll forward to Walmart  
11:54:31 18 242, which I'll note as Exhibit 27.

11:54:37 19 So this e-mail -- I've outgrown my timeline. I had to  
11:54:42 20 tape another sheet to it.

11:54:43 21 This e-mail is January 14 of 2014, correct?

11:54:52 22 **A** That looks correct.

11:54:55 23 **Q** And it is an e-mail from you to Christina Strobel and  
11:55:07 24 Kimberly Snow, correct?

11:55:16 25 **A** Those are the two people on that e-mail, yes.

11:55:21 1 Q Again, you say, "Pharmacists are granted the ability  
11:55:24 2 to exercise their professional judgment and choose to refuse  
11:55:27 3 to fill any prescription if they feel it was written for  
11:55:30 4 other than a legitimate medical purpose."

11:55:32 5 Do you see that?

11:55:32 6 A Yes, sir.

11:55:33 7 Q But again, it's not that they're granted the ability.  
11:55:39 8 That's what they're supposed to do, isn't it?

11:55:45 9 A Again, the purpose of the e-mail is to make sure the  
11:55:49 10 pharmacists realize they're allowed to do it at Walmart as  
11:55:52 11 well.

11:55:52 12 Q Well, I mean, I'm suggesting that instead of saying  
11:55:55 13 they're allowed to do it, it goes back to my kids  
11:55:57 14 speeding -- or following the speed limit. They're allowed  
11:55:59 15 to drive under the speed limit or they're required to.

11:56:05 16 Right? They ought to be required to do that,  
11:56:08 17 shouldn't they?

11:56:09 18 A That's your interpretation, sir.

11:56:13 19 Q It's not yours, as the person driving compliance.  
11:56:16 20 Yours is, eh, you can believe it's other than a legitimate  
11:56:20 21 medical purpose, then go ahead and fill it. That was --

11:56:23 22 A I think I've pointed out that there's multiple people,  
11:56:26 23 not just me, working on compliance of controlled substances.  
11:56:30 24 At this point, Shelley, myself, and all the directors also  
11:56:33 25 were working on compliance of controlled substances. It was

11:56:35 1 not just Brad.

11:56:35 2 **Q** So this is something that all of the Walmart  
11:56:39 3 compliance people agreed on; is that right?

11:56:40 4 **A** My understanding is that Shelley and Caroline sent  
11:56:46 5 this information just as I did.

11:56:47 6 **Q** Okay. So everybody at Walmart seemed to agree that it  
11:56:51 7 was an ability not to fill a prescription if they thought it  
11:56:57 8 was for a legitimate medical purpose rather than a  
11:56:59 9 requirement, right?

11:57:01 10 **A** I can't speak to everybody at Walmart, but the three  
11:57:04 11 of us were sending out this information.

11:57:05 12 **Q** Okay. Then you go on to say that "there are no  
11:57:11 13 blanket refusals allowed by the boards of pharmacy."

11:57:22 14 You say it again, don't you?

11:57:27 15 **A** Well, that was the guidance that was being offered by  
11:57:30 16 Walmart at the time, and we'll continue to say that because  
11:57:32 17 that was the guidance that was being offered.

11:57:34 18 **Q** So no blanket refusals are allowed by boards of  
11:57:38 19 pharmacies is again being said in January of 2014, right?

11:57:52 20 **A** That's the date of this e-mail.

11:57:57 21 **Q** And this is the same e-mail that also says they have  
11:58:00 22 the ability to refuse if they think it's wrong, it's not  
11:58:10 23 legitimate. Right?

11:58:20 24 **A** That's what the e-mail states.

11:58:27 25 (Interruption in video playback:)

**Nelson - (By Video Deposition)**

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11:58:27 1 MR. LANIER: Your Honor, this is a good  
11:58:28 2 breaking point for lunch at page 294, line 25.

11:58:32 3 THE COURT: Okay. Ladies and gentlemen, we'll  
11:58:36 4 take our noon recess for an hour and then pick up with  
11:58:40 5 Mr. Nelson. I'm sorry that your fine Browns spirit didn't  
11:58:45 6 translate to the performance of the team yesterday. You're  
11:58:49 7 welcome to dress the same way Thursday, or maybe mix it up  
11:58:51 8 or change it a bit, and maybe we'll have better results.

11:58:55 9 So have good lunch.

11:59:08 10 (The jury is not present.)

11:59:24 11 THE COURT: All right. If everyone can be  
11:59:25 12 seated.

11:59:26 13 Mr. Lanier, if I permit some additional questioning of  
11:59:36 14 Mr. Nelson on these late produced documents, I mean, I note  
11:59:41 15 that you interrogated him during the deposition about a  
11:59:46 16 number of e-mails, and they are somewhat similar, at least  
11:59:50 17 they related to, you know, this blanket refusal -- or no  
12:00:00 18 blanket refusals to fill.

12:00:03 19 How much time would you want?

12:00:05 20 MR. LANIER: Your Honor, it seems to me I  
12:00:08 21 should be able to do it within two hours.

12:00:14 22 THE COURT: Okay. All right.

12:00:19 23 MR. WEINBERGER: Your Honor, can I just add to  
12:00:22 24 that on behalf of the plaintiffs?

12:00:23 25 THE COURT: Yes.



12:00:23 1 MR. WEINBERGER: So the notion that we were  
12:00:28 2 able to question a witness on a couple of e-mails reflecting  
12:00:36 3 policies, compliance with policies, does not really address  
12:00:43 4 our concerns about these failure to produce documents.  
12:00:48 5 Because as the Court I'm sure is aware, the more times that  
12:00:53 6 documents reflect violations of compliance, the more  
12:01:00 7 examples that exists in, you know, large -- nationwide, the  
12:01:10 8 more proof that we have to present to the jury about the  
12:01:17 9 misconduct.

12:01:18 10 And so just because there were some documents that may  
12:01:20 11 have been similar in nature that we did have before the  
12:01:24 12 additional 56,000 documents were produced after his  
12:01:28 13 deposition really doesn't address our concerns about the  
12:01:35 14 lack of production and our ability to use that.

12:01:38 15 I mean, I understand there's some limit to which the  
12:01:41 16 judge -- to which you can set, but I just wanted to address  
12:01:46 17 that correctly.

12:01:47 18 THE COURT: All right. The question I have to  
12:01:49 19 Walmart, when is this production going to end? I mean, I --  
12:01:55 20 this was -- I understood that it was promised to be  
12:02:01 21 completed in July. I mean, we're now in the end of -- well,  
12:02:03 22 middle of October. So when will these documents finally be  
12:02:06 23 produced?

12:02:08 24 MR. MAJORAS: Your Honor, I think a number of  
12:02:10 25 things here. The motion itself of course ignores the

12:02:14 1 tortured history of the discovery process here. We have  
12:02:18 2 been endeavoring to produce since the Court's March 3 order  
12:02:21 3 of this year the nationwide discovery issued with respect to  
12:02:26 4 14 of our individuals at headquarters, which includes  
12:02:29 5 Mr. Nelson.

12:02:30 6 And I'll point out that Mr. Nelson's job  
12:02:34 7 responsibilities did not include Ohio. So the production  
12:02:37 8 done prior to the Court's order almost by just the nature of  
12:02:42 9 the order meant that Mr. Nelson's documents would come out  
12:02:46 10 after that time period.

12:02:48 11 MR. WEINBERGER: Your Honor --

12:02:49 12 THE COURT: I have a limited amount of time.  
12:02:53 13 When will the production be complete?

12:02:56 14 MR. MAJORAS: Your Honor, I'd like to believe  
12:02:57 15 it's complete now, but I can't tell my folks in good faith  
12:03:00 16 if they come across something that they think should be  
12:03:03 17 produced to be produced. And I think that's what we're  
12:03:05 18 seeing here, especially over the last few weeks where we've  
12:03:08 19 had very minor productions. And the three that were  
12:03:11 20 produced during the course of this trial were essentially  
12:03:13 21 duplicates of what had been produced a long time ago.

12:03:16 22 I'll also note --

12:03:17 23 THE COURT: Obviously everyone has a  
12:03:19 24 continuing obligation, but are you representing that you  
12:03:23 25 believe you've -- Walmart has produced the documents that

**Nelson - (By Video Deposition)**

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12:03:28 1 have been directed to be produced?

12:03:29 2 MR. MAJORAS: Your Honor, I believe we have  
12:03:30 3 produced all documents we have located on the production  
12:03:34 4 that was supposed to have been made.

12:03:36 5 THE COURT: Okay.

12:03:36 6 MR. MAJORAS: If someone were to come to me  
12:03:38 7 tomorrow and say I've found something, obviously I'll be  
12:03:41 8 obligated to --

12:03:41 9 THE COURT: Of course, I understand that, but  
12:03:43 10 that's always the case. I mean, we all know that.

12:03:48 11 MR. MAJORAS: That's what we've been doing.

12:03:50 12 THE COURT: All right. Well -- all right.

12:03:52 13 MR. WEINBERGER: Your Honor, can I just  
12:03:54 14 respond about their obligations?

12:03:58 15 THE COURT: All right.

12:04:00 16 MR. WEINBERGER: This is such an important  
12:04:01 17 issue regarding our ability to prepare for trial that I  
12:04:04 18 think it's really important that I be allowed to provide  
12:04:08 19 some context in the record.

12:04:10 20 So in CT 1, Walmart refused to add Mr. Nelson as  
12:04:18 21 custodian.

12:04:19 22 On March 25, 2020, *ProPublica* published an article  
12:04:26 23 regarding Walmart's -- regarding the DOJ complaint, civil  
12:04:33 24 complaint, that had been filed against Walmart, and revealed  
12:04:37 25 Nelson's role in corporate compliance.

12:04:42 1 On July 11, 2020, Special Master Cohen ordered Walmart  
12:04:50 2 to add Nelson as a custodian and to prioritize production of  
12:04:56 3 his documents. And in that order he says, "Walmart should  
12:05:05 4 have identified Nelson back then and produced documents from  
12:05:08 5 his custodial file in Track One. If those documents are not  
12:05:12 6 relevant to the distribution claims in Track One-B as  
12:05:16 7 Walmart insists, then plaintiffs will not be allowed to use  
12:05:19 8 them.

12:05:20 9 "I understand Walgreens intends to introduce Nelson  
12:05:24 10 documents presumably" --

12:05:26 11 MR. LANIER: Walmart.

12:05:27 12 MR. WEINBERGER: I mean Walmart -- actually,  
12:05:29 13 I'm reading from Special Master Cohen's order, so we've all  
12:05:35 14 confused the two defendants.

12:05:36 15 "I understand Walmart intends to produce Nelson's  
12:05:39 16 documents presumably in connection with Track Three, but  
12:05:43 17 production of Nelson's documents must be prioritized because  
12:05:47 18 he is a Track One custodian."

12:05:53 19 So Walmart then added Nelson as a custodian but  
12:05:56 20 restricted the production of his documents based upon  
12:05:58 21 geographic scope.

12:06:01 22 Now, he just testified, Nelson testified that when he  
12:06:07 23 was driving compliance, it included the state of Ohio.

12:06:11 24 On January 29, 2021, we sent a letter to Special  
12:06:16 25 Master Cohen objecting to Walmart's geographic scope

12:06:22 1 limitations and provided evidence of relevant materials that  
12:06:24 2 were being withheld based upon DR 22 productions.

12:06:30 3 On March 16, Special Master Cohen overruled Walmart's  
12:06:37 4 geographic scope limitations. They appealed to you. You  
12:06:41 5 overruled Walmart's geographic scope limitations or  
12:06:45 6 objections on April 9, 2021. And on May 14, Walmart started  
12:06:51 7 producing these geographic scope documents.

12:06:57 8 And I've already detailed the history of the fact that  
12:07:02 9 multiple times during that time frame, June 24, June 26,  
12:07:07 10 there are -- there's correspondence going back and forth  
12:07:10 11 with Special Master Cohen being copied about the fact that  
12:07:16 12 these documents continually come in. And this is after  
12:07:25 13 Walmart is representing that they anticipate production  
12:07:31 14 being complete by the end of July.

12:07:37 15 The other thing that's important is this is not just  
12:07:40 16 about Nelson, Your Honor, and his documents, of which there  
12:07:44 17 are 56,000 that were produced since July. This is about a  
12:07:47 18 larger production involving 200,000 documents.

12:07:53 19 We intend to call his boss, the director of regulatory  
12:07:58 20 affairs, Susanne Hiland, as our only live witness involving  
12:08:05 21 Walmart, other than, if you order Mr. Nelson to come to  
12:08:14 22 court to testify.

12:08:14 23 And we just got a document on September 18, 2021, an  
12:08:19 24 e-mail to Susanne Hiland from 2007 talking about a  
12:08:28 25 problematic doctor in Houston, Texas, and the concerns that

12:08:33 1 the pharmacist had.

12:08:35 2 And her response was, I don't understand the concern.

12:08:37 3 If you don't have enough stock, we need to get you more

12:08:41 4 stock of opioids.

12:08:44 5 Back to Mr. Nelson. A recently produced document,

12:08:50 6 September 18, 2021, it was in that production, I can't tell

12:08:56 7 you exactly when we found it in this needle in the haystack

12:09:04 8 of documents that were produced, Mr. Nelson is writing an

12:09:06 9 e-mail about a Cleveland doctor, a Dr. Lally, in June of

12:09:16 10 2013, where the pharmacist is concerned about Dr. Lally's

12:09:21 11 volume of scripts and the fact that he is prescribing the

12:09:27 12 cocktails together. And Brad Nelson is asked to comment on

12:09:36 13 thoughts about refusal to fill.

12:09:37 14 This is a document just produced.

12:09:41 15 So, Your Honor --

12:09:43 16 THE COURT: All right, look, I -- as I said,

12:09:48 17 this is what I'm going to do. I'm doing this step by step.

12:09:53 18 Obviously, Mr. Nelson will be testifying. Now, I believe I

12:10:00 19 have the authority to make him come here, but rather than

12:10:08 20 having a big brouhaha about that, the important thing is

12:10:13 21 that he testify.

12:10:18 22 So when do you want him to testify in your order? You

12:10:20 23 gave me an order for witnesses in the week. Monday is these

12:10:24 24 two depositions. Mr. Nelson and Ms. -- or Mr. Tsipakis.

12:10:30 25 Tuesday, T. Villanueva, Natasha Polster, live witnesses.

**Nelson - (By Video Deposition)**

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12:10:37 1 Wednesday, you've got three depositions; Thursday, Chunderlik and  
12:10:41 2 Cutler; and Friday, five witnesses.

12:10:43 3 When do you want -- in that order, when do you want  
12:10:46 4 Nelson? And what I'm going to do is he'll testify live by  
12:10:49 5 video.

12:10:51 6 MR. LANIER: Your Honor, two options there.  
12:10:57 7 One would be on Thursday we would try to fit him in. The  
12:11:01 8 other option is Ms. Hiland, who was his boss, we had been  
12:11:07 9 asked by Walmart if we could bump her to next week because  
12:11:11 10 of a personal crisis she has had.

12:11:14 11 THE COURT: All right.

12:11:15 12 MR. LANIER: And so she's coming next Monday.

12:11:17 13 We could do him by video right before we do her on  
12:11:20 14 Monday, and then we'll be done. But we bumped her to Monday  
12:11:24 15 because of a personal issue.

12:11:27 16 And they would fit well together because it's him and  
12:11:30 17 then it's Boss, but we could also do it Thursday, whatever  
12:11:35 18 is --

12:11:36 19 THE COURT: Well, it's --

12:11:37 20 MR. LANIER: My preference would be Monday,  
12:11:38 21 Your Honor.

12:11:38 22 THE COURT: All right. Well, then, all right,  
12:11:44 23 that's what we'll do.

12:11:45 24 And I think we had determined it's easier to begin the  
12:11:50 25 day with a witness testifying by video.

12:11:53 1 MR. LANIER: Yes, Your Honor.

12:11:53 2 THE COURT: So we'll have it 9 a.m. Monday.

12:12:03 3 MR. MAJORAS: Your Honor, I need to make a  
12:12:04 4 number of notes for the record, please.

12:12:06 5 THE COURT: Yes.

12:12:07 6 MR. MAJORAS: First of all, without going into  
12:12:08 7 the detail because I understand your timing right now, we  
12:12:11 8 certainly disagree with the timeline and the materials that  
12:12:16 9 Mr. Weinberger went through. We agreed that this has been a  
12:12:19 10 tortured process of discovery. We also are confident we  
12:12:22 11 have acted in good faith throughout this process and will  
12:12:24 12 continue to do so. And therefore, even with respect to a  
12:12:28 13 motion for sanctions, that would be relevant to that motion,  
12:12:32 14 I'll note that we filed, probably as I'm speaking, just so  
12:12:35 15 we have it on the record, an opposition to the motion which  
12:12:39 16 is docket number 4038.

12:12:40 17 THE COURT: Well, no one's handed it to me, so  
12:12:43 18 I'm not -- I'm putting off, quite frankly, putting off any  
12:12:47 19 consideration of sanctions. The only sanction will be what  
12:12:50 20 I -- you know, how we deal with the time. And I will charge  
12:12:53 21 it all to Walmart. But I'm not -- at the moment, I'm not  
12:12:58 22 imposing any additional sanctions. I want to see how this  
12:13:01 23 goes. All right?

12:13:03 24 So that's what a Court's supposed to do, to see if we  
12:13:06 25 can remedy it. And so we will have -- so, Mr. Majoras, you



12:13:14 1 are to arrange for Mr. Nelson to be at a place Monday  
12:13:20 2 morning at 9:00 where he can be deposed. It will be two  
12:13:22 3 hours by the plaintiffs. I don't know how -- obviously,  
12:13:25 4 Walmart is entitled to -- I don't know if it's technically  
12:13:30 5 cross-examination or responsive questioning. And you can  
12:13:36 6 use as much of your time as you want. I'm not cutting you  
12:13:40 7 off.

12:13:40 8 Just so he knows, I am limiting Mr. Lanier to two  
12:13:43 9 hours.

12:13:45 10 MR. MAJORAS: I will do what I can, Your  
12:13:46 11 Honor, again noting he's out of my control. We have contact  
12:13:50 12 with his counsel.

12:13:50 13 THE COURT: Well, he's now in your control,  
12:13:52 14 okay? He's in your control.

12:13:54 15 MR. MAJORAS: I respectfully disagree, Your  
12:13:56 16 Honor.

12:13:56 17 THE COURT: Well, fine, I respect your  
12:13:58 18 disagreement. He's in your control to accomplish this.

12:14:01 19 And if I get any pushback, trust me, I'll just have  
12:14:05 20 him here, okay? I mean --

12:14:06 21 MR. LANIER: He had a settlement agreement  
12:14:07 22 with Walmart that requires him to cooperate, so it's in  
12:14:11 23 writing.

12:14:11 24 THE COURT: But I'd rather just do it  
12:14:16 25 simply -- you know, I think we can accomplish the same thing

12:14:18 1 by video. The technology works. And rather than get into a  
12:14:22 2 whole big issue about flying him here, we'll do it this way.  
12:14:25 3 So it will be 9 a.m. Monday, and then we'll follow it Monday  
12:14:29 4 with Ms. Hiland.

12:14:38 5 And I hope that this takes care of the issue, but I'm  
12:14:41 6 going to hold in abeyance anything further. I'm watching to  
12:14:44 7 see how this trial unfolds.

12:14:51 8 And so all the time pertaining to Nelson will be  
12:14:55 9 charged to Walmart. Now, I've given the defendants  
12:14:58 10 collectively 75 hours. I haven't told you how you'd  
12:15:02 11 allocate it among you. But how ever you're allocating it,  
12:15:06 12 all the time for Mr. Nelson on Monday, Mr. Lanier's  
12:15:12 13 questioning and then whatever questioning Mr. Majoras and  
12:15:16 14 Ms. Fumerton want to do, will be charged against Walmart.

12:15:19 15 MR. MAJORAS: I object to that as an  
12:15:21 16 inappropriate sanction, Your Honor.

12:15:22 17 THE COURT: Your objection's noted. It's  
12:15:24 18 mighty mild compared to what I could do. So -- or it  
12:15:28 19 might -- but it's still under consideration.

12:15:31 20 Okay.

12:15:34 21 (A luncheon recess was taken at 12:15 p.m.)

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12:58:11 1 A F T E R N O O N S E S S I O N

01:07:50 2 - - - - -

01:07:50 3 (The jury is present at 1:07 p.m.)

01:07:52 4 THE COURT: Please be seated.

01:07:53 5 Mr. Lanier, you may continue with your video

01:07:55 6 deposition of Mr. Nelson.

01:07:56 7 MR. LANIER: Thank you, Your Honor.

01:07:56 8 Mr. Lawlor, thank you.

01:08:08 9 **Q** Sir, during the break did you have a chance to pull  
01:08:10 10 out exhibit -- I'm going to call it Exhibit Number 28, but  
01:08:13 11 it's Walmart 547. It's a slide show.

01:08:27 12 Okay. "Health & Wellness Compliance focus areas  
01:08:32 13 steering meeting." The date on this is January 2, 2014.

01:08:42 14 Do you see that on the cover?

01:08:43 15 **A** Yes, sir.

01:08:44 16 **Q** The slide that I want to talk to you about is slide  
01:08:46 17 number 6. I've got it up here as "Focus Areas Dashboard."

01:08:53 18 Do you see that?

01:08:55 19 **A** Yes.

01:08:55 20 **Q** And are you familiar with this document or this  
01:09:00 21 presentation? Does this ring a bell?

01:09:02 22 **A** I don't recall this specific document, no, but --

01:09:17 23 **Q** I won't go into great lengths, then. I'll just ask  
01:09:20 24 you a couple of questions off of this line right here.

01:09:22 25 The work group of Controlled Substances, a project

01:09:28 1 name, refusal to fill. The project purpose is "establish a  
01:09:35 2 process for the analysis of refusal to fill data and  
01:09:40 3 reporting problematic prescribers or patients internally.

01:09:49 4 Do you see where that project is set out?

01:09:51 5 **A** Yes.

01:09:53 6 **Q** The project leader for this is you, according to this  
01:09:59 7 Exhibit Number 28, correct?

01:10:03 8 **A** That's what the document states, yes.

01:10:06 9 **Q** Doesn't say Shelley or -- who was the other one that  
01:10:13 10 works with you at that? Kimberly -- Christina. Doesn't say  
01:10:19 11 Shelley --

01:10:19 12 **A** No, Caroline.

01:10:20 13 **Q** Caroline. Doesn't say Shelley or Caroline. It just  
01:10:24 14 says you, doesn't it?

01:10:25 15 **A** That is correct.

01:10:30 16 **Q** And it looks like your due date on that project was  
01:10:32 17 the first quarter of 2015. Correct?

01:10:35 18 **A** That's what the document says.

01:10:37 19 **Q** Now, do you recall whether or not this document is  
01:10:39 20 accurate? And by that I mean, were you given a project on  
01:10:44 21 refusing to fill where your purpose was to establish a  
01:10:49 22 process for the analysis of the refusal to fill data and  
01:10:53 23 report problematic prescribers or patients internally, with  
01:10:58 24 a completion date around first quarter of fiscal year 2015?

01:11:02 25 **A** I honestly don't recall that specific project.

01:11:09 1 Q Well, if you were assigned it, it didn't stick into  
01:11:15 2 your memory; is that what you're saying?

01:11:18 3 A I just don't remember that specific project.

01:11:19 4 Q All right. Well, let's say from January 2 of 2014,  
01:11:30 5 which actually is before that last letter you wrote, but up  
01:11:35 6 through Quarter 1 of 2015, fiscal year, you are, according  
01:11:44 7 to Exhibit 28, project leader on the refusal to fill  
01:11:59 8 process. Right?

01:12:01 9 A That's what the document says.

01:12:03 10 Q Let's keep going. Now we're going to look at Walmart  
01:12:07 11 377, which I'm going to mark as Exhibit Number 29.

01:12:22 12 All right. The first thing is an easy one. It's the  
01:12:25 13 e-mail on the front.

01:12:27 14 Gayle Lane sends you an e-mail March 21, 2014. And  
01:12:36 15 she sends one at 9 at night.

01:12:39 16 Do you see that?

01:12:40 17 A I do.

01:12:40 18 Q Who is Gayle Lane?

01:12:42 19 A As I recall, she was a DEA contact in south Florida,  
01:12:52 20 as I recall.

01:12:54 21 Q DEA Miami, Weston Diversion Office in Weston, Florida,  
01:13:00 22 is her signature line.

01:13:01 23 Is that your testimony?

01:13:03 24 A I don't know which office she was located in. I just  
01:13:06 25 known southern Florida, so Miami would probably fit that

01:13:10 1 spot.

01:13:11 2 **Q** All right. She says, "Nice talking with you today.

01:13:14 3 Questionable circumstances start on page 28."

01:13:19 4 You see that?

01:13:22 5 **A** Yes, sir.

01:13:24 6 **Q** And if you'll turn the page, you'll see the *Federal*

01:13:33 7 *Register* that dates way back in October 12 of 2012.

01:13:40 8 You see that as well?

01:13:41 9 **A** Yes, sir.

01:13:42 10 **Q** Look, it's the *Holiday* case.

01:13:50 11 You see?

01:14:01 12 **A** Yes, sir, I see that.

01:14:02 13 **Q** Now, if we go back to our timeline, we're in 2014, but

01:14:11 14 we got to go all the way back -- this was put out just in

01:14:19 15 the couple of weeks after, maybe a month after you had read

01:14:26 16 the *Holiday* press release, wasn't it?

01:14:30 17 **A** I believe that's accurate.

01:14:31 18 **Q** So we can go and look, if you had done the work back

01:14:40 19 then, 10/12/12, you've actually got the *Holiday* case written

01:14:43 20 up in the *Federal Register*, right?

01:14:52 21 **A** Yeah, the *Holiday* case appears to be in the *Federal*

01:14:57 22 *Register* on October 12 of 2012.

01:14:59 23 **Q** All right. Now, you're getting it sent to you after

01:15:01 24 you were talking on the phone, I assume, with the DEA people

01:15:09 25 in 2014. But she directed you to page 28.

01:15:15 1 Do you see that?

01:15:16 2 **A** I do see where she says that.

01:15:18 3 **Q** If you go to page 28, do you see the center column?

01:15:22 4 Let me make it bigger so maybe you can see it here.

01:15:28 5 The center column. Do you see it?

01:15:36 6 "The Agency does not require omniscience. However,  
01:15:43 7 when the circumstances surrounding the presentation of a  
01:15:45 8 prescription would give rise to suspicion in a reasonable  
01:15:50 9 professional, there is a duty to question the prescription."

01:16:03 10 See that?

01:16:04 11 **A** Okay.

01:16:04 12 **Q** "Though initially framed as a reasonable professional  
01:16:08 13 standard, the Agency has considered the duty to discharge  
01:16:12 14 the corresponding responsibility --" that's our echoing term  
01:16:20 15 from that COR, right?

01:16:22 16 **A** I see what you're highlighting, but I don't see where  
01:16:24 17 it ties back to pharmacist responsibility yet. Go ahead.

01:16:27 18 **Q** All right. "By evaluating the circumstances in light  
01:16:30 19 of what would be considered suspicious by a reasonable  
01:16:32 20 pharmacist."

01:16:35 21 Ties back there. Do you see it?

01:16:37 22 **A** Yes.

01:16:41 23 **Q** Then reads, "Accordingly, a pharmacist or pharmacy may  
01:16:49 24 not dispense a prescription in the face of a red flag."

01:16:58 25 You following with me so far?

01:17:00 1 **A** I'm reading the document. Go ahead.

01:17:05 2 **Q** And then it defines a red flag as a "circumstance that  
01:17:10 3 does or should raise a reasonable suspicion as to the  
01:17:14 4 validity of a prescription, unless he or it takes steps to  
01:17:22 5 resolve the red flag and ensure that the prescription is  
01:17:25 6 valid."

01:17:29 7 Do you see that?

01:17:30 8 **A** Yes.

01:17:32 9 **Q** So this e-mail that is sent to you in 2014 -- what was  
01:17:41 10 the day? March 2014? Yeah.

01:17:51 11 **A** Yes.

01:17:51 12 **Q** All right. So March of 2014 you get the e-mail that  
01:18:00 13 has *Holiday* attached. And it says not that a pharmacist  
01:18:14 14 is -- has an ability to refuse, it says something a little  
01:18:22 15 different, doesn't it?

01:18:24 16 What you were sent a couple -- a year and a half or so  
01:18:28 17 after it was published, out of the *Holiday* case, doesn't say  
01:18:35 18 that a pharmacist has an ability to refuse if they don't  
01:18:43 19 think the prescription is legitimate. It says something  
01:18:47 20 much harder. It says that they "may not dispense until  
01:18:53 21 they've resolved the red flag and ensured the prescription  
01:18:55 22 is valid."

01:18:58 23 Do you see that?

01:18:59 24 **A** Yes, I do see that, but I don't know what the red flag  
01:19:02 25 was that they were resolving, so...



01:19:04 1 Q Well, I think they say that there are a number of  
01:19:07 2 those. But in the process of that, this is -- you never  
01:19:14 3 told this to your pharmacists, did you?

01:19:16 4 A That information that was sent out contained red flags  
01:19:22 5 in those POMs.

01:19:24 6 Q Yeah. I'm not fussing that.

01:19:30 7 A As well as the refusal to fill policy.

01:19:32 8 Q Okay. So you told your pharmacists, you're not  
01:19:36 9 allowed to dispense until you ensure that prescription is  
01:19:40 10 valid. We're going to see that kind of language from you?

01:19:44 11 A You will see the information is stated in the POMs  
01:19:47 12 that after -- after they have used their professional  
01:19:49 13 judgment, they can refuse to fill a prescription or fill the  
01:19:52 14 prescription if they've resolved the issues.

01:19:55 15 Q Actually --

01:19:56 16 A That's in the POMs.

01:19:57 17 Q Sir, I'm not talking about the POMs. I'm talking  
01:20:00 18 about these e-mails you've been sending out.

01:20:03 19 You've been sending out e-mails that say pharmacists  
01:20:05 20 are granted the ability to exercise their professional  
01:20:08 21 judgment and choose to refuse to fill any if they feel it  
01:20:14 22 was written for other than a legitimate purpose.

01:20:16 23 That's what you've been sending out, like Exhibit 27  
01:20:19 24 I've got on the screen, right?

01:20:21 25 A And if you continue to read the next statement, it

01:20:23 1 will say, "You and your staff are encouraged to review the  
01:20:26 2 POMs," which are called out there. And in those POMs it  
01:20:29 3 talks about red flags and establishing those and correcting  
01:20:32 4 the issues before they would fill a prescription. And if  
01:20:35 5 they choose not to, then they would refuse and fill out the  
01:20:39 6 information on a refusal to fill form.

01:20:41 7 **Q** Well, you don't say -- look, you don't even tell them  
01:20:44 8 they have to read it. You just say, "You are encouraged to  
01:20:47 9 review them."

01:20:49 10 But my point is, sir, you give them the ability to  
01:20:54 11 exercise their judgment and refuse instead of do what the  
01:21:00 12 case said, that they have a responsibility and they may not  
01:21:06 13 dispense until they ensure.

01:21:08 14 Do you not see the difference between those two?

01:21:12 15 **A** Yeah, the information is included in the POMs that  
01:21:16 16 explains for them to use their professional judgment before  
01:21:20 17 they would fill a prescription, resolve whatever issues they  
01:21:23 18 want -- comes up, and to -- and if they don't resolve the  
01:21:27 19 issues, then not to fill the prescription and to fill out a  
01:21:29 20 refusal to fill document.

01:21:31 21 **Q** That's not what you said, sir. You told them they're  
01:21:34 22 granted the ability to do that. Time after time again, in  
01:21:38 23 e-mails, correspondence, you said they're granted the  
01:21:41 24 ability to exercise the professional judgment and choose to  
01:21:46 25 refuse. You did not say the law says you cannot fill this

01:21:50 1 until you resolve it, did you?

01:21:52 2 **A** I think the e-mail stands for itself. It says they --  
01:21:56 3 after using professional judgment, they can take many  
01:21:59 4 actions with that prescription, to fill it or not fill it.

01:22:02 5 **Q** And so we're real clear on this, and I think you and I  
01:22:06 6 have communicated on it before, but I want to make sure.

01:22:09 7 This same *Federal Register* you were sent that talked  
01:22:15 8 about the pharmacists having a corresponding responsibility  
01:22:18 9 under the federal law to dispense only lawful prescriptions,  
01:22:22 10 do you see that, where I've highlighted it?

01:22:26 11 **A** I see that on the document.

01:22:28 12 **Q** You were aware that the corresponding responsibility  
01:22:31 13 to ensure the dispensing of valid prescriptions extends to  
01:22:37 14 the pharmacy itself, correct?

01:22:40 15 **A** Certainly through our MOA we were responsible to make  
01:22:42 16 sure they were legal -- they were valid prescriptions.

01:22:45 17 **Q** Okay. And that's your understanding of the  
01:22:50 18 requirements that you had as well, isn't it?

01:22:52 19 **A** That Walmart was supposed to make sure they were valid  
01:22:55 20 prescriptions before they were dispensed?

01:22:56 21 **Q** Yes, sir.

01:22:57 22 **A** That was the agreement in the MOA.

01:22:59 23 **Q** And not just in the MOA. I mean, that's the  
01:23:05 24 responsibility that Walmart has regardless, right?

01:23:08 25 **A** That's what was agreed to by the DEA and Walmart, so I

01:23:12 1 would assume yes.

01:23:13 2 **Q** All right. This is an e-mail chain. Marking it as  
01:23:18 3 Exhibit Number 30, but we'll read it together. It starts on  
01:23:23 4 the very back page, if you want to get to the back page.

01:23:26 5 Got it?

01:23:40 6 **A** I do.

01:23:42 7 **Q** "Debbie, we have two doctors in the north central  
01:23:50 8 Texas area, Dr. Diamond from Sherman, Dallas, Paris, and  
01:23:54 9 wherever else he lands, and a Dr. Randall Wade from the  
01:24:02 10 McKinney area. Both doctors are under investigation by the  
01:24:06 11 DEA. Steven will confirm for you what Dr. Diamond's office  
01:24:10 12 looks like in Paris on the days he is there.

01:24:14 13 Walmart is getting slammed with C-II and other  
01:24:19 14 controlled substances from these two doctors.

01:24:25 15 C-II, that includes opioids, doesn't it?

01:24:29 16 **A** Well, as we discussed before, most opioids are C-II  
01:24:33 17 prescriptions.

01:24:34 18 **Q** All right. "Currently, in the Sherman/Denison area,  
01:24:43 19 Target, Walgreens, Kroger, Medicine Shoppe, will not honor  
01:24:49 20 prescriptions from these two physicians. Three  
01:24:52 21 independents, and Brookshires, Albertsons, CVS, will fill  
01:24:57 22 for these physicians after they verify each patient in the  
01:24:59 23 Texas DPS system and on a case-by-case basis. Does Walmart  
01:25:05 24 have any policy concerning DEA investigations?"

01:25:09 25 See that?

01:25:16 1 **A** Yes.

01:25:16 2 **Q** And Debbie Mack, who got that, sends it on up to you,  
01:25:22 3 December 24, 2014 you reply. That's on page 2.

01:25:27 4 Do you see that?

01:25:29 5 **A** I do.

01:25:30 6 **Q** You said, "Here is our best practices for refusing to  
01:25:36 7 fill a prescription. Being under investigation is simply a  
01:25:38 8 red flag to consider when using your professional judgment."

01:25:46 9 Did I read that right?

01:25:47 10 **A** That's what the document says.

01:25:50 11 **Q** Yeah, but you told me earlier when you say red flag,  
01:25:54 12 you meant it cannot be resolved.

01:25:58 13 Is that a new meaning for you?

01:26:04 14 UNIDENTIFIED SPEAKER: Objection. Form.

01:26:06 15 **A** I'm not sure I understand your question. You said red  
01:26:10 16 flag.

01:26:10 17 **Q** I asked you earlier, I said red flag is just something  
01:26:13 18 that means, hey, we need to look into it. You said, no, no,  
01:26:17 19 not when I use it. When I say red flag, I mean it's  
01:26:22 20 something that cannot be resolved.

01:26:23 21 Do you remember that?

01:26:24 22 **A** I don't remember that specifically, sir, but it may  
01:26:27 23 have come up that way.

01:26:28 24 **Q** All right. You say, "However, an investigation of  
01:26:31 25 itself is not a good reason to discontinue filling

01:26:34 1 legitimate prescriptions. The key is to determine which  
01:26:39 2 prescriptions are legitimate. Use the best practices below  
01:26:44 3 to guide you. Remember, we are not allowed to blanket  
01:26:48 4 refuse to fill for any prescriber."

01:26:52 5 See that?

01:26:56 6 **A** Yes.

01:26:57 7 **Q** And again, that's your mantra you keep sending out  
01:27:01 8 that we've talked about before, right?

01:27:03 9 **A** Again, I want to remind you, it's not just me that was  
01:27:06 10 sending that out.

01:27:08 11 **Q** Well, yours is one I'm reading and deposing, right?

01:27:12 12 **A** I understand. But Caroline and Shelley also used this  
01:27:17 13 same information.

01:27:17 14 **Q** Well, we are in 12 -- this is Christmas Eve, Christmas  
01:27:24 15 Eve 2014, and you again are saying, no blanket refusals.  
01:27:33 16 Right?

01:27:33 17 **A** That was Walmart's policy at the time.

01:27:36 18 **Q** And this is after you'd been, it seems, assigned to be  
01:27:41 19 project leader on this refusal to fill process at Walmart,  
01:27:47 20 right?

01:27:48 21 **A** I don't know what that has to do with blanket  
01:27:51 22 refusals, sir.

01:27:51 23 **Q** Well, I mean, if you're project leader on the refusal  
01:27:54 24 to fill process, you sure ought to be considering whether or  
01:27:59 25 not you're allowed to do a blanket refusal to fill, don't

01:28:04 1 you think?

01:28:04 2 **A** And Walmart's policy already did not allow blanket  
01:28:07 3 refusals, so that would have been included in the process.

01:28:13 4 **Q** "Pharmacists are granted the ability to exercise their  
01:28:16 5 professional judgment and choose to refuse to fill."

01:28:20 6 You do that -- they have the ability if they think  
01:28:23 7 it's for some reason other than legitimate.

01:28:26 8 You do that again, don't you?

01:28:28 9 **A** Yes, sir, that is the direction that was being sent  
01:28:30 10 out at the time.

01:28:30 11 **Q** And then even on this one, you continue to say, "Even  
01:28:38 12 after the pharmacist established there is a doctor-patient  
01:28:43 13 relationship, the pharmacist is still allowed to refuse on  
01:28:46 14 an individual prescription basis, but no blanket refusals  
01:28:51 15 are allowed by the boards of pharmacy."

01:28:56 16 Do you see that? You say it again.

01:28:59 17 **A** Yes. If there was a concern with that, Ms. Mack would  
01:29:05 18 have said something, because she's a supervisor.

01:29:06 19 **Q** Well, if you look at the next e-mail, it's on the next  
01:29:10 20 page, from Donna Hander. It's sent to you. And now we're  
01:29:17 21 in February of 2015.

01:29:20 22 You see? You see where I am?

01:29:28 23 **A** I do.

01:29:28 24 **Q** "This situation has gotten worse. Now this doctor  
01:29:33 25 wants our stores to accept C-II electronic, which we all

01:29:38 1 know is legal, but when his, quote, patients, closed quote,  
01:29:43 2 come up three at a time with Methadone, Norco, Xanax, and  
01:29:50 3 sometimes MS Contin, and then tell you he video chats with  
01:29:57 4 them, what do you do? He's even FedEx'd prescriptions to my  
01:30:05 5 pharmacy for people living over 100 miles away. If all of  
01:30:09 6 us got together and started filling out refusal to fill,  
01:30:11 7 that's all we'd do all day longer. Sherman, Store 947,  
01:30:18 8 started out the day with eight prescriptions for Norco from  
01:30:21 9 Dr. Diamond, some e-scribed.

01:30:26 10 "I've included the names of other pharmacists in the  
01:30:28 11 CC area because they're looking to me for guidance. We are  
01:30:32 12 concerned about our jobs and about filling for a pill mill  
01:30:36 13 doctor. I'm in my 29th year with Walmart and have never had  
01:30:39 14 a situation this bad with a doctor. Other chains are  
01:30:42 15 refusing to fill for him, which makes our burden even  
01:30:45 16 greater. Please help us."

01:30:55 17 Did I read that correctly?

01:30:56 18 **A** That's what the document says.

01:30:58 19 **Q** And your reply? "The information below still applies  
01:31:05 20 to electronic controlled substance prescriptions.  
01:31:08 21 Pharmacists are still able to refuse to fill any  
01:31:10 22 prescription, electronic or otherwise."

01:31:16 23 You just say go back to what I said before, don't you?

01:31:19 24 **A** I didn't change any direction there, no, but there's  
01:31:22 25 additional information down below on that e-mail.



01:31:24 1 Q "There have been zero refusal to fill web forms filled  
01:31:29 2 out for Dr. Diamond." You're not even filling them out in  
01:31:33 3 your stores even though you know this, right?

01:31:34 4 A That is what the document states.

01:31:36 5 Q In 2014, store 147 filled out none for Dr. Diamond.  
01:31:43 6 Store 148, one for Dr. Diamond. Store 947, none for  
01:31:50 7 Dr. Diamond. Is that correct?

01:31:51 8 A That is what the document says.

01:31:52 9 Q So when you get notice that there may be a pill mill  
01:31:57 10 concern, people are asking for help, saying, please help us,  
01:32:02 11 they're worried about their jobs, they're worried about  
01:32:04 12 filling for a pill mill doctor, and you look and you've only  
01:32:11 13 got one refusal to fill form, do you do a deep dive and  
01:32:15 14 investigation to see what's going on?

01:32:18 15 A I think that's what this e-mail shows.

01:32:19 16 Q That you did a deep dive? I mean, did you check out  
01:32:24 17 why they're not filling out those forms?

01:32:26 18 A Well, their e-mail stated that they had lots of  
01:32:29 19 prescriptions being presented, and that was not the  
01:32:31 20 information that was being shown to Walmart.

01:32:47 21 Q Sir -- hold on one second.

01:33:00 22 After this, you've got another e-mail. If you'll pull  
01:33:06 23 out Walmart 393, I'm going to mark it as Exhibit 31.

01:33:15 24 This starts out with an e-mail on the second page from  
01:33:17 25 Sabrina Edgeman, who says, "Eric, we had a question come up

01:33:23 1 this weekend concerning a local physician and his  
01:33:25 2 prescribing of CDs."

01:33:31 3 Those are control drugs, right?

01:33:33 4 **A** I don't know if that's what they're referring to or  
01:33:36 5 not, but CDS.

01:33:38 6 **Q** We'll keep going. It will make sense as we go through  
01:33:41 7 it.

01:33:41 8 "Both the corporate office of Target and Kroger have  
01:33:44 9 told their pharmacists they're not allowed to fill CDs from  
01:33:47 10 Dr. Howard Gregg Diamond at all, period."

01:33:53 11 See where I'm reading?

01:33:54 12 **A** Yes.

01:33:59 13 **Q** "Target was illusive, made me call the corporate  
01:34:02 14 office, all I got was a legal answer. But Kroger said their  
01:34:05 15 corporate offices sent out a letter saying they weren't to  
01:34:08 16 fill for him due to some legal issues being investigated  
01:34:11 17 with his practice and prescribing, and they didn't want  
01:34:13 18 their pharmacists put at risk filling these medications that  
01:34:16 19 were not needed and overdosing his patients."

01:34:23 20 Do you see that?

01:34:24 21 **A** I see what the pharmacist wrote.

01:34:26 22 **Q** "Has Walmart heard anything about this?"

01:34:30 23 Do you see that question?

01:34:31 24 **A** Yes, I see it on this e-mail.

01:34:39 25 **Q** All right. And then Eric Frikken replies and says,

01:34:47 1 "Sabrina, this is the first time I'm hearing of this doctor.  
01:34:50 2 I'll forward up to Compliance. Does he currently have a  
01:34:54 3 valid license? Remember for any refusal to fill, we just  
01:35:32 4 need to ensure that we fill out the refusal to fill."

01:35:04 5 He says also, "At this time we cannot do a blanket  
01:35:09 6 refusal on a doctor."

01:35:10 7 He's echoing your line, isn't he?

01:35:12 8 **A** That is Walmart's direction.

01:35:17 9 **Q** And who is Eric Frikken?

01:35:23 10 **A** I don't -- the name rings a bell, but I don't recall  
01:35:25 11 what his title was at that moment.

01:35:34 12 **Q** Sabrina e-mails back and says, "Yes, he's got a valid  
01:35:38 13 license. We called his office this morning to verify.  
01:35:40 14 Asked the nurse if they knew what was going on. They said,  
01:35:44 15 yes, they heard several pharmacies were refusing to fill his  
01:35:48 16 prescriptions, but they won't tell the office why.

01:35:50 17 "It's weird though. The prescription has a Sherman,  
01:35:53 18 Texas, office address, and then a Dallas phone number. I'm  
01:35:58 19 guessing they have multiple offices. Anyway, the nurse  
01:36:03 20 validated the prescription and the patient's been on it for  
01:36:06 21 years, so we all felt comfortable it was a valid  
01:36:09 22 prescription and took care of the patient. We just thought  
01:36:11 23 it was weird that other certain pharmacies had a blanket  
01:36:15 24 refusal for a doctor. Very odd. Maybe we will learn  
01:36:20 25 something from Compliance on him. It's just very weird."

01:36:24 1 Do you see what the assistant manager from the Walmart  
01:36:26 2 store wrote?

01:36:28 3 **A** Yes, I see what they wrote.

01:36:39 4 **Q** All right. So we've got this alert going out. And it  
01:36:42 5 comes to you, by the way. You send it on. Eric Frikken  
01:36:46 6 sent it to you. You send it on to Shelley, asking her to  
01:36:51 7 assist because Eric's in Oklahoma.

01:36:53 8 Do you see that?

01:36:54 9 **A** That's correct.

01:36:55 10 **Q** Are you familiar with Dr. Wade? Does that ring a  
01:37:01 11 bell?

01:37:02 12 **A** I am not familiar with Dr. Wade, but I've heard the  
01:37:07 13 name.

01:37:07 14 **Q** Why don't you pull out Walmart 373. I'll mark it as  
01:37:11 15 Exhibit 33. This e-mail will start -- the first e-mail on  
01:37:22 16 this chain is at the bottom of page 2. It's an e-mail from  
01:37:25 17 Brad Polk to Thuy Nguyen and Linda Dowden. The subject is  
01:37:35 18 DEA and doctor cocktails.

01:37:39 19 Do you see that?

01:37:50 20 **A** I do.

01:37:50 21 **Q** Brad Polk, who is he?

01:37:54 22 **A** I don't know that I've ever met Brad Polk.

01:37:56 23 **Q** Okay. He writes and says, "This is a topic that I  
01:38:02 24 think we need to start talking about since it could result  
01:38:04 25 in hefty fines for our company and for us personally. I've

01:38:10 1 heard over the last few weeks that Kroger and Walgreens have  
01:38:17 2 started blocking doctors that write excessively for certain  
01:38:22 3 medicine, hydrocodone, APAP, Xanax, Soma, possibly others,  
01:38:27 4 especially when prescribed in conjunction with each other.  
01:38:30 5 I spoke with a Kroger pharmacist this morning, and he  
01:38:32 6 mentioned that as of October 1, the DEA was going after  
01:38:38 7 pharmacies and pharmacists that continue to fill from these  
01:38:40 8 doctors that prescribe them excessively."

01:38:47 9 You tracking with me?

01:38:49 10 **A** That's what that document says.

01:38:50 11 **Q** "What their definition of excessive is, I'm not sure,  
01:38:53 12 but the Kroger pharmacists mentioned that their home office  
01:38:57 13 determined who to block and then blocked the pharmacies by  
01:39:04 14 installing a hard halt when they tried to fill it. This was  
01:39:09 15 in response to the DEA's threatening a \$73 million fine to  
01:39:15 16 their company if they continued. So far, they have blocked  
01:39:18 17 four doctors in this area, Dr. Randall Wade being one of  
01:39:23 18 them."

01:39:24 19 Do you see that?

01:39:27 20 **A** That's what that pharmacist wrote.

01:39:31 21 **Q** "He mentioned two in the Denton area, and I'm not sure  
01:39:37 22 of the other. We hear that Dr. Wade is telling his patients  
01:39:40 23 to go to Walmart because they'll fill them, so he knows  
01:39:45 24 about the block from the other stores."

01:39:48 25 Do you see that?

01:39:54 1 **A** That's what the pharmacist wrote.

01:39:57 2 **Q** "My concern now is that we as a company will start to  
01:40:00 3 accumulate this suspect clientele and be in the same boat,  
01:40:05 4 so to speak, as Kroger and Walgreens trying to fend off a  
01:40:09 5 major fine."

01:40:10 6 Do you see that as well?

01:40:11 7 **A** That appears to be that pharmacist's opinion.

01:40:17 8 **Q** He ends this, "Do you or does the home office know  
01:40:24 9 anything about this and, if so, what steps are being taken  
01:40:27 10 to protect us and our company?"

01:40:29 11 Do you see that?

01:40:32 12 **A** Yes, sir.

01:40:32 13 **Q** I mean, also, we ought to be concerned about  
01:40:35 14 protecting the public and the patients, right?

01:40:38 15 **A** I can't answer to what the pharmacist was thinking  
01:40:41 16 about protecting the public or the patients.

01:40:43 17 **Q** Well, this gets up to you, and you reply, March 3,  
01:40:49 18 2014. At the bottom of page 1 it shows your reply.

01:40:55 19 Do you see that?

01:41:04 20 **A** March 3? Yes, I see that.

01:41:07 21 **Q** And here's what you have to say.

01:41:10 22 "Walgreens has developed its own processes due to the  
01:41:14 23 fine they received from the dispensing practices they were  
01:41:17 24 allowed to continue in Florida -- that were allowed to  
01:41:20 25 continue in Florida. Their current CIA agreement with the

01:41:24 1 DEA" -- sorry.

01:41:28 2 "Their current CIA agreement with the DEA is more  
01:41:33 3 aggressive than anything else in the marketplace."

01:41:36 4 And you talk about that.

01:41:39 5 Then you say, "Blanket refusals are not allowed by  
01:41:43 6 state boards of pharmacy."

01:41:45 7 See that?

01:41:48 8 **A** Yes, sir. That was the direction being sent out at  
01:41:50 9 the time.

01:41:50 10 **Q** Then you say, "Pharmacists are granted the ability to  
01:41:57 11 exercise their professional judgment and choose to refuse to  
01:42:03 12 fill if they feel the prescription was written for other  
01:42:06 13 than a legitimate medical purpose."

01:42:08 14 You use that line again, don't you?

01:42:10 15 **A** That's the same information that we've been sending  
01:42:13 16 out.

01:42:14 17 **Q** Yeah. So you send that out in reference to this with  
01:42:18 18 Dr. Wade, and you get back from Brad Polk, "Thank you, Brad.  
01:42:26 19 I knew you could give a much more detailed explanation."

01:42:33 20 See that?

01:42:34 21 **A** I don't think that was from Brad Polk. I believe that  
01:42:37 22 was from Linda Dowden to me.

01:42:41 23 **Q** Ah, you're right. You're right, you're right, you're  
01:42:45 24 right.

01:42:45 25 Brad Polk sent this in reply to Shala on this chain.

01:42:48 1 "I think I was talking to Carla a couple of weeks ago  
01:42:52 2 regarding Dr. Randall Wade. I told her I would forward any  
01:42:55 3 information. Bottom line is, it's based on each individual  
01:42:59 4 situation, and you can't have a blanket denial to fill for a  
01:43:02 5 doctor. Brad Nelson explains it below."

01:43:06 6 Do you see that?

01:43:11 7 **A** Yes, sir.

01:43:12 8 **Q** He doesn't say it's Walmart policy. He says Brad  
01:43:15 9 Nelson explains it.

01:43:16 10 Do you see that?

01:43:18 11 **A** No, that was that pharmacist's opinion, but it's  
01:43:22 12 Walmart policy.

01:43:23 13 **Q** Sir, did you know about this McKinney doctor, Randall  
01:43:26 14 Wade, getting arrested and ultimately losing his license or  
01:43:31 15 setting his license aside, with other punishments connected  
01:43:34 16 to eight deaths connected with overdoses?

01:43:39 17 **A** At some point I was made aware of this.

01:43:43 18 **Q** Yeah, because this is 2016, November 11.

01:43:53 19 Do you see that?

01:43:53 20 **A** Yes, that's the date.

01:43:55 21 **Q** And the time where you were being discussed about him  
01:43:57 22 in an e-mail chain where you, quote, explain it below and  
01:44:02 23 explain why it's okay to dispense, is just being passed  
01:44:05 24 around by Carla to Crystal, July of 2016, even though you  
01:44:19 25 wrote it in March of 2014.



01:44:21 1 Do you see that?

01:44:23 2 **A** I see where that e-mail was forwarded in July of 2016,  
01:44:30 3 but I don't agree with the fact that the information that  
01:44:32 4 was explained before says it was okay to fill those  
01:44:34 5 prescriptions.

01:44:36 6 **Q** Well, what you said -- you said that pharmacists have  
01:44:42 7 the ability to choose not to, but they can't have a blanket  
01:44:48 8 refusal.

01:44:52 9 That's what you told me, isn't it?

01:44:54 10 **A** Well, as I've explained before, that's Walmart's  
01:44:57 11 policy and guidelines, you know, the information that was  
01:44:59 12 being shared at the time.

01:45:00 13 **Q** So in 2016, just four months before he's in front of  
01:45:10 14 the judge and arrested and giving up his license, y'all are  
01:45:13 15 still asking the question, "Should we stop filling his?"

01:45:23 16 **A** That pharmacist did ask that question.

01:45:25 17 **Q** All right. So as we finish up this timeline, we've  
01:45:31 18 got the 2015 and '16 where you're still continuing to say --  
01:45:38 19 you're continuing to say there's no blanket refusal to fill  
01:45:53 20 and that they have an ability to refuse if they question --  
01:45:59 21 if they think that it's a bad prescription, right?

01:46:02 22 **A** I saw where that e-mail was forwarded in 2016. I  
01:46:06 23 don't know if the verbiage that was being sent out in 2016,  
01:46:11 24 on a new request, was the same as what was sent out in 2014  
01:46:15 25 on that one that was forwarded.

01:46:16 1 Q Well, if you look at it, it's Exhibit 33. Talks about  
01:46:20 2 Randall Wade.

01:46:26 3 Says, "I'm forwarding this to you because this  
01:46:28 4 discussion that we had about Randall Wade a couple of years  
01:46:31 5 ago. He's still under investigation by the DEA. I just  
01:46:34 6 found out today CVS is no longer filling his controls per  
01:46:38 7 corporate orders. Kroger stopped filling them a couple of  
01:46:42 8 years ago. Just thought you should know about all of this.  
01:46:46 9 You might want to let Kirk know, too. My question is,  
01:46:49 10 should we stop filling his controls, too?"

01:46:52 11 And then it sends around --

01:46:54 12 A That was one pharmacist to another. That's got  
01:46:56 13 nothing to do with me.

01:46:56 14 Q Well, except she sends around the e-mail, which is the  
01:47:00 15 one where Brad Nelson explains it below.

01:47:03 16 That's -- your e-mail is the one making the rounds.

01:47:08 17 Do you see that?

01:47:09 18 A That may be, but I did not send that e-mail in 2016.

01:47:14 19 Q You never sent a correcting e-mail either, did you?

01:47:17 20 A I didn't know it was sent, sir.

01:47:20 21 Q All right. Sir, as we were going down the road, we  
01:47:25 22 stopped and looked at the -- you and then the requirements  
01:47:28 23 and then the failures. And my last stop on the road is  
01:47:32 24 motive. Why?

01:47:37 25 You understand what motive means, right?

01:47:43 1 **A** Yes, sir.

01:47:43 2 **Q** In other words, what was driving the activities that  
01:47:50 3 we have seen over and over again.

01:47:52 4 Sir, would you agree or disagree with this answer:

01:48:10 5 It's all about money.

01:48:11 6 Agree or disagree?

01:48:12 7 **A** I don't know what that's in context with, sir.

01:48:16 8 **Q** Sir, when I say it's all about money, I want to know  
01:48:22 9 why Walmart's filling prescriptions they shouldn't be  
01:48:25 10 filling; why Walmart has someone driving compliance who  
01:48:29 11 isn't compliance trained; why is Walmart having to have  
01:48:36 12 repeated settlements and investigations; and why is Walmart  
01:48:40 13 giving wrong instructions about refusing to fill.

01:48:44 14 Those questions, sir, I'm suggesting it's a profit  
01:48:48 15 motive by Walmart.

01:48:50 16 Do you agree or disagree?

01:48:51 17 **A** I can't agree or disagree to that -- that statement  
01:48:55 18 that it's all about money.

01:48:56 19 **Q** All right. Then what I'm going to do is give you what  
01:48:59 20 I'll mark as Exhibit 35, but it's Walmart Number 96.

01:49:05 21 All right. This document says, down at the bottom,  
01:49:08 22 it's an e-mail from you to a number of different people,  
01:49:13 23 February 13, 2015.

01:49:16 24 It says, "Here are the refusal to fill notifications  
01:49:20 25 sent to the DEA in the month of January 2015. Feel free to

01:49:26 1 share with your teams as you see appropriate."

01:49:28 2 Do you see that?

01:49:29 3 **A** That's what the document says, yes.

01:49:33 4 **Q** Then you got a reply e-mail, just 20 minutes later,  
01:49:41 5 from David Reitnauer that said to you, "Does your team pull  
01:49:49 6 out any insights from these we need to highlight?"

01:49:53 7 Do you see that?

01:49:55 8 **A** I do.

01:49:56 9 **Q** Now, that can be important for public safety. I mean,  
01:50:00 10 what we've got here is refusal to fill notifications. Those  
01:50:07 11 are important things, aren't they?

01:50:08 12 **A** They were important to the MOA and reporting to the  
01:50:11 13 DEA.

01:50:12 14 **Q** Well, yeah. There's a reason why, don't you figure?

01:50:16 15 **A** I don't know why the DEA wanted the refusal to fill  
01:50:19 16 information.

01:50:19 17 **Q** Well, don't you figure it may be in part to make sure  
01:50:26 18 your people are doing it? Could be one reason, couldn't it?

01:50:29 19 **A** As I stated, I don't know what the DEA wanted that  
01:50:33 20 information for.

01:50:34 21 **Q** Do you think maybe it's to accumulate information and  
01:50:38 22 look for signs of a problem?

01:50:40 23 **A** You would have to ask the DEA, sir. I do not know.

01:50:43 24 **Q** Does it -- did it ever occur to you that maybe it's  
01:50:48 25 important because it forced you to drill down and actually

01:50:50 1 look for insights from such things?

01:50:54 2 **A** As I recall, the MOA simply required us to report  
01:50:58 3 within seven days to the DEA. It didn't require to do  
01:51:01 4 analysis.

01:51:01 5 **Q** Don't you want to do analysis to figure out where  
01:51:09 6 you're contributing to an epidemic that's killing people?

01:51:14 7 **A** Again, we were doing what we were told to do, and  
01:51:17 8 that's what was important, to get that information to the  
01:51:19 9 DEA.

01:51:19 10 **Q** Well, look at what you said in reply to "Does your  
01:51:23 11 team pull any insights."

01:51:26 12 You said, "The MOA that requires the reporting of the  
01:51:29 13 refusal to fill expires in 30 days. We haven't invested a  
01:51:35 14 great amount of effort in doing analysis on the data since  
01:51:39 15 the agreement's virtually over. Driving sales and patient  
01:51:45 16 awareness is a far better use of our market director's and  
01:51:52 17 market manager's time."

01:51:55 18 Did I read that correctly?

01:51:59 19 **A** That is what the document says.

01:52:00 20 **Q** Is that what you said, Brad Nelson?

01:52:03 21 **A** That is what I wrote in that e-mail, yes.

01:52:07 22 **Q** Did you make the decision not to invest a great amount  
01:52:14 23 of effort in doing analysis on the data?

01:52:16 24 **A** I was not asked to do analysis on the information.

01:52:21 25 **Q** Wasn't my question. I said, did you make the decision

01:52:24 1 not to invest a great amount of time or great amount of  
01:52:29 2 effort in doing analysis on the data?

01:52:31 3 **A** No, I did not make that decision.

01:52:32 4 **Q** Who did?

01:52:39 5 **A** As I already testified, I was not asked to do analysis  
01:52:42 6 on that information.

01:52:47 7 **Q** Did anybody direct you not to?

01:52:49 8 **A** I don't recall being asked to do analysis on there.

01:53:02 9 **Q** So you write, "Driving sales and patient awareness is  
01:53:06 10 a far better use of our market director and market manager's  
01:53:09 11 time." Correct?

01:53:14 12 **A** That is what the document says.

01:53:16 13 **Q** That's what you said in the document, correct?

01:53:18 14 **A** That is correct.

01:53:19 15 **Q** So one insight we can get into motive from this  
01:53:26 16 document would be, at least as far as you were concerned,  
01:53:34 17 driving sales and patient awareness.

01:53:51 18 And that's being aware of patients, right?

01:53:54 19 **A** No, patient awareness means patient being aware of all  
01:53:58 20 the services and things that the pharmacy has to offer.

01:54:00 21 **Q** Ah, let them know if there's a sale going on and  
01:54:05 22 what-all the pharmacy can do, and all of that kind of stuff,  
01:54:07 23 right?

01:54:07 24 **A** Mostly about immunizations and pharmacy services.

01:54:11 25 **Q** So what we have here is a statement by you that

01:54:16 1 "driving sales and patient awareness is a far better use of  
01:54:20 2 the market director's and market manager's time than  
01:54:22 3 investing a great amount of effort analyzing refusal to fill  
01:54:27 4 data," right?

01:54:31 5 Is that correct?

01:54:32 6 **A** Yes. Yes, given the fact that the agreement to report  
01:54:35 7 was nearly over.

01:54:38 8 **Q** All right. I've got a few more, but I'm going to stop  
01:54:40 9 now because Ms. Tara wants to ask you questions, and I'm  
01:54:44 10 going to reserve anything I can do afterwards. So I will  
01:54:51 11 pass the witness.

01:54:52 12 Thank you, sir.

01:55:22 13 - - - - -

01:55:22 14 **Q** ...counsel in this litigation, we have not met before;  
01:55:25 15 is that correct?

01:55:25 16 **A** That is correct.

01:55:25 17 **Q** And we haven't spoken before; is that correct?

01:55:28 18 **A** That is correct.

01:55:28 19 **Q** I'm just going to ask you a few follow-up questions to  
01:55:30 20 clarify the record based on some of the stuff that  
01:55:35 21 Mr. Lanier asked you about.

01:55:36 22 Do you have what's previously been marked in this  
01:55:38 23 deposition as Nelson Exhibit 30 handy? It also says  
01:55:47 24 P-WMP\_246 in the upper right-hand corner.

01:55:48 25 **A** I do.

01:55:49 1 Q And this is an e-mail chain from you to a number of  
01:55:52 2 folks.

01:55:54 3 And do you recall Mr. Lanier asking you questions  
01:55:58 4 about this document?

01:56:01 5 A Yes, I do recall that.

01:56:02 6 Q Okay. And he asked you about the top portion of the  
01:56:08 7 e-mail. That was your response on the first page. And  
01:56:12 8 asked you about a couple lines from it. And I want to go  
01:56:15 9 through the rest of your response to make sure that the  
01:56:17 10 record is clear what the entire guidance is that you were  
01:56:20 11 giving in this particular e-mail.

01:56:22 12 And we're going to start at the top of this e-mail.  
01:56:25 13 You write, "The information below still applies to  
01:56:29 14 electronic controlled substance prescriptions. Pharmacists  
01:56:33 15 are still able to refuse to fill any prescription,  
01:56:36 16 electronic or otherwise."

01:56:38 17 Did I read that correctly?

01:56:38 18 A That is correct.

01:56:39 19 Q And then you go on to write, "The challenge with C-II  
01:56:42 20 electronic prescriptions is that you cannot give a copy back  
01:56:45 21 to the patient and you would need to contact the prescriber  
01:56:48 22 and let them know that you are not filling the prescription  
01:56:51 23 so that the prescriber can send the Rx to another pharmacy."

01:56:58 24 You continue, "I understand that the RTF process is  
01:57:01 25 time consuming; however, when a complaint comes in, you will



01:57:05 1 be glad you documented the event. These bad actors will  
01:57:11 2 continue to write for controlled substances, and when they  
01:57:14 3 do, if you send the RTF web form, then I personally report  
01:57:19 4 those to the DEA every morning."

01:57:21 5 Did I read that correctly?

01:57:24 6 **A** You did read that correctly.

01:57:25 7 **Q** And was one of your responsibilities at Walmart from  
01:57:28 8 the time period of about 2011 to 2015 to report these  
01:57:32 9 refusal to fills to the DEA?

01:57:35 10 **A** That is correct.

01:57:35 11 **Q** And can you describe to the jury a little bit about  
01:57:41 12 that process? Did you come in each morning, for example, to  
01:57:43 13 do that?

01:57:46 14 **A** Yes, I came in early in the mornings to process the  
01:57:52 15 refusal to fill web forms that had come in from the previous  
01:57:57 16 day.

01:57:58 17 **Q** And then you go on in this e-mail to write, "Without  
01:58:01 18 the refusal to fill documents, there is no information going  
01:58:04 19 to the DEA in Dallas regarding this prescriber's writing  
01:58:08 20 habits. I encourage you to fill out the refusal to fill web  
01:58:14 21 forms."

01:58:15 22 Do you see that?

01:58:16 23 **A** I see that.

01:58:17 24 **Q** And this prescriber here in the e-mail is referring to  
01:58:20 25 Dr. Diamond; is that right?

01:58:21 1 **A** That is correct.

01:58:22 2 **Q** And you go on to write, "So far, there have been zero  
01:58:26 3 refusal to fill forms filled out for Dr. Diamond in 2015."  
01:58:31 4 Correct?

01:58:31 5 **A** That's correct.

01:58:31 6 **Q** And then you write, "In 2014, Store 147 filled out  
01:58:36 7 four RTFs and none for Dr. Diamond. Store 148 filled out  
01:58:41 8 two RTFs, and one was for Dr. Diamond. And Store 947 filled  
01:58:46 9 out one RTF, and none were for Dr. Diamond."

01:58:50 10 Did I read that correctly?

01:58:51 11 **A** That is what the document says, yes.

01:58:53 12 **Q** And then you go on to write, "The bottom line is I  
01:59:01 13 have received only one RTF for Dr. Diamond in the last 14  
01:59:04 14 months, therefore, the DEA is not hearing anything from  
01:59:06 15 Walmart since stores are choosing not to file the RTF forms.  
01:59:10 16 Please let me know how we can assist. However, you can help  
01:59:12 17 your situation the best by reporting the refusal to fills so  
01:59:16 18 that the information can be shared with the DEA."

01:59:20 19 Did I read that correctly?

01:59:22 20 **A** You did, that's correct.

01:59:23 21 **Q** And was it your expectation that sharing this refusal  
01:59:27 22 to fill information with the DEA would lead the DEA to take  
01:59:32 23 appropriate action against Dr. Diamond if it felt that it  
01:59:37 24 was necessary?

01:59:37 25 **A** That would have been my understanding with what the

01:59:39 1 DEA did with this information when they received it.

01:59:43 2 **Q** And then if you could pull out what was previously  
01:59:45 3 marked as Exhibit Parker 30. We are going to mark it in  
01:59:51 4 this deposition as Nelson Exhibit 37.

01:59:55 5 And if you want to keep what was previously marked as  
01:59:58 6 Nelson Exhibit 30 handy, what you can see by comparing the  
02:00:03 7 two e-mails is that what's now been marked as Nelson Exhibit  
02:00:08 8 37 is actually a continuation of the e-mail thread that was  
02:00:14 9 in Nelson Exhibit 30.

02:00:16 10 Is that right? I'll give you a moment to look over  
02:00:19 11 the document.

02:00:19 12 **A** Yes. There are two additional e-mails that were  
02:00:22 13 exchanged after the Exhibit 30 e-mail was produced.

02:00:31 14 **Q** And so I want to pick up on Exhibit 37 where we had  
02:00:35 15 left off with Exhibit 30.

02:00:37 16 So if you see, the last e-mail we had read in Exhibit  
02:00:42 17 30 was your response that began with "the information below  
02:00:47 18 still applies." And then if you look immediately above that  
02:00:49 19 on Exhibit 37, Miss Donna Hander responds to you: "Sir, I  
02:01:00 20 appreciate all your time spent on this."

02:01:02 21 Did I read that correctly?

02:01:03 22 **A** You did.

02:01:04 23 **Q** And she further writes, "My fellow pharmacists now  
02:01:07 24 realize the importance of filling out the form. We were  
02:01:12 25 afraid of getting fired for refusing to fill, but now I

02:01:16 1 understand it's for our protection."

02:01:18 2 Did I read that correctly?

02:01:18 3 **A** That is what the document says, yes.

02:01:20 4 **Q** And Mr. Nelson, did you ever reprimand any Walmart  
02:01:25 5 pharmacist for submitting a refusal to fill form?

02:01:28 6 **A** No, I never did.

02:01:30 7 **Q** And are you aware of anyone at Walmart who ever  
02:01:36 8 reprimanded a pharmacist for submitting a refusal to fill  
02:01:39 9 form?

02:01:40 10 **A** I'm not aware of any.

02:01:41 11 **Q** And in fact, Walmart encouraged its pharmacists to  
02:01:48 12 refuse to fill any prescription that the pharmacist felt was  
02:01:52 13 inappropriate; is that right?

02:01:54 14 **A** Yes, and that was the direction that was sent out in  
02:01:56 15 e-mails multiple times.

02:01:57 16 **Q** And this Hander goes on to say, "When you have two to  
02:02:02 17 three people in line with the same C-II and have three each,  
02:02:06 18 it is very difficult. Again, thank you so much."

02:02:09 19 Did I read that correctly?

02:02:09 20 **A** That is correct.

02:02:09 21 **Q** And so Ms. Hander in this e-mail is thanking you for  
02:02:16 22 the guidance that you're providing.

02:02:18 23 Do you agree with that?

02:02:19 24 **A** I would agree with that.

02:02:20 25 **Q** Okay. And then you respond to Ms. Hander on February

02:02:26 1 8, 2015, and write: "Donna, thanks for reaching out for  
02:02:31 2 assistance and guidance. We are happy to assist and support  
02:02:36 3 in any way we can. We have been successful in Georgia and  
02:02:39 4 Florida with having pain management office either closed  
02:02:44 5 down or significant reductions in controlled substance  
02:02:49 6 prescriptions being written. In all of these cases, the DEA  
02:02:52 7 has stepped in to educate the prescribers. I look forward  
02:02:57 8 to assisting your staff in this endeavor."

02:03:01 9 Did I read that correctly?

02:03:02 10 **A** That is what the document says.

02:03:03 11 **Q** Mr. Nelson, based on your experience at Walmart, do  
02:03:05 12 you think that Walmart had a good relationship with the DEA  
02:03:08 13 when you worked at home office?

02:03:12 14 **A** That was my experience. The DEA was very supportive  
02:03:16 15 of what Walmart was doing.

02:03:18 16 **Q** Did you assist the DEA whenever an agent followed up  
02:03:22 17 with respect to a refusal to fill and asked for assistance?

02:03:29 18 **A** Either myself or my assistant, Heather Gregory, would  
02:03:32 19 have done that.

02:03:32 20 **Q** And you just testified that it was your experience  
02:03:35 21 that Walmart had a good relationship with the DEA. Was it  
02:03:40 22 also your experience that they had a good relationship with  
02:03:42 23 other regulatory bodies such as boards of pharmacy?

02:03:46 24 **A** I don't know about -- I don't know that for sure.

02:03:52 25 **Q** Okay. In your experience, did you, whenever you had

02:03:55 1 to interact with the Board of Pharmacy, did you think you  
02:03:58 2 had a good relationship with them?

02:03:59 3 **A** Well, with the boards of pharmacy, yes.

02:04:01 4 **Q** Do you agree that red flags means different things in  
02:04:05 5 different contexts?

02:04:06 6 **A** Red flags in written form, in a document may be one  
02:04:10 7 thing, and actually when you see it on a prescription may be  
02:04:13 8 something different. It's not always exactly the same.

02:04:15 9 **Q** Do you agree that in Walmart guidance there are  
02:04:22 10 references to red flags that are things for pharmacists in  
02:04:28 11 their professional judgment to look for and in their  
02:04:32 12 judgment if they feel it's necessary to further resolve  
02:04:36 13 before filling a prescription?

02:04:38 14 **A** Yes, I believe that.

02:04:39 15 **Q** Did the DEA ever suggest to you that Walmart should  
02:04:44 16 adopt a blanket refusal to fill policy?

02:04:48 17 **A** To Brad Nelson personally, no.

02:04:50 18 **Q** A corporate block is often referred to as blocking a  
02:04:56 19 prescriber from the home office so that no pharmacies could  
02:04:58 20 fill for that particular prescriber.

02:05:00 21 Are you aware of any Board of Pharmacy that has  
02:05:06 22 explicitly permitted a corporate block policy?

02:05:08 23 **A** Again, I'm not aware of a Board of Pharmacy saying  
02:05:13 24 that that was authorized.

02:05:15 25 **Q** And did the DEA ever suggest to you that Walmart

02:05:18 1 should adopt a corporate block policy?

02:05:21 2 **A** Not to Brad Nelson directly, no.

02:05:25 3 **Q** And you communicated with the DEA frequently in  
02:05:30 4 connection with reporting the refusals to fill; is that  
02:05:34 5 right?

02:05:34 6 **A** That is correct.

02:05:37 7 **Q** In your experience at Walmart, pharmacists were  
02:05:40 8 encouraged to exercise their professional judgment and not  
02:05:43 9 fill any prescriptions that they felt was inappropriate,  
02:05:46 10 correct?

02:05:46 11 **A** Yes, I believe that's accurate.

02:05:48 12 **Q** And that would be true if it was one prescription that  
02:05:53 13 they felt was inappropriate from a prescriber or multiple  
02:05:58 14 prescriptions they felt was -- they felt were inappropriate  
02:06:02 15 from a prescriber; is that right?

02:06:06 16 **A** That is correct.

02:06:06 17 **Q** So if in their professional judgment after reducing  
02:06:11 18 the specific prescriptions a Walmart pharmacist did not want  
02:06:15 19 to fill a single controlled substance prescription from a  
02:06:19 20 prescriber, in your experience, Walmart would have supported  
02:06:22 21 that pharmacist in that decision, correct?

02:06:25 22 **A** If they documented each refusal as required by policy,  
02:06:29 23 they would be 100 percent supported.

02:06:32 24 **Q** And it is your understanding that corresponding  
02:06:35 25 responsibility applies to the pharmacist and not to Walmart

02:06:40 1 as a corporation; is that correct?

02:06:42 2 **A** That is correct.

02:06:43 3 **Q** In your experience at Walmart, was patient safety the  
02:06:52 4 number one priority?

02:06:54 5 **A** In my experience as a pharmacist there and in my  
02:06:57 6 experience as an operator there, patient safety was always  
02:07:00 7 the top of the list.

02:07:02 8 **Q** Mr. Nelson, more generally so, we've looked at a  
02:07:05 9 number of e-mails. Did you also follow up with pharmacists  
02:07:08 10 via phone if they had concerns?

02:07:14 11 **A** That would happen from time to time, yes.

02:07:17 12 **Q** And would the same be true with market director?

02:07:21 13 **A** Would I call the market directors?

02:07:23 14 **Q** Yes.

02:07:23 15 **A** That is true.

02:07:25 16 **Q** And the same with regional directors as well?

02:07:28 17 **A** That was much more rare because they are harder to  
02:07:31 18 track down due to their travel.

02:07:33 19 **Q** I understand.

02:07:34 20 I guess my point is that, you know, the guidance that  
02:07:37 21 you're giving to the field, including leadership and to  
02:07:40 22 pharmacists, isn't all reflected in e-mails. Some of that  
02:07:46 23 guidance was provided orally as well. Do you agree with  
02:07:49 24 that?

02:07:49 25 **A** That is correct.



02:07:50 1 Q And was that also commonplace, that you encouraged  
02:07:53 2 pharmacists to work with their market directors or regional  
02:07:56 3 directors regarding any concerns they might have?

02:07:57 4 A Absolutely.

02:08:00 5 Q Did you ever pressure any pharmacist to fill a C-II  
02:08:07 6 prescription that they felt was inappropriate?

02:08:12 7 A I did not.

02:08:12 8 Q And are you aware of anybody else at Walmart who  
02:08:18 9 pressured a pharmacist to fill a C-II prescription that he  
02:08:23 10 or she did not feel was appropriate?

02:08:24 11 A I am not aware of that.

02:08:27 12 Q Okay. I think you can put that document aside.

02:08:31 13 And I want to ask you about what was previously marked  
02:08:36 14 as Exhibit 35, which was also marked in the upper right-hand  
02:08:45 15 corner P-WMT\_96.

02:08:48 16 Let me know when you have that document in front of  
02:08:50 17 you, Mr. Nelson.

02:08:51 18 A I have it.

02:08:51 19 Q Thank you.

02:08:52 20 And Mr. Lanier asked you a series of questions about  
02:08:55 21 this e-mail, correct?

02:08:56 22 A That is correct.

02:08:56 23 Q And Mr. Lanier asked you a series of questions about  
02:09:01 24 what you meant by patient awareness, and the record would  
02:09:07 25 reflect what you explained to him that meant.

02:09:08 1 So I wanted to ask you about the first part of that  
02:09:11 2 sentence, which is driving sales.

02:09:13 3 And so just to refresh your recollection, the sentence  
02:09:18 4 reads, "Driving sales from patient awareness is a far better  
02:09:22 5 use of our market director's and market manager's time.

02:09:28 6 Did I read that correctly?

02:09:28 7 **A** You did.

02:09:30 8 **Q** Mr. Nelson, what are you referring to when you wrote  
02:09:33 9 "driving sales"?

02:09:34 10 **A** Well, being working at Walmart for as many years as I  
02:09:38 11 had, in operations "driving sales" is just a Walmart-speak  
02:09:41 12 for go out there and do your business. That's basically  
02:09:44 13 what that's all about, is it includes over-the-counter  
02:09:53 14 medications, it includes prescription medications, it  
02:09:55 15 includes all things around the business of pharmacy. So  
02:09:57 16 it's just kind of Walmart-speak of saying, go out and get  
02:10:01 17 them, tiger.

02:10:03 18 **Q** And you weren't in this e-mail at all referring to  
02:10:07 19 driving sales of C-II prescriptions, correct?

02:10:10 20 **A** Not at all.

02:10:12 21 **Q** I just want to go over one other question about this  
02:10:16 22 document at the bottom.

02:10:19 23 And so this is your first e-mail in Exhibit 35. And  
02:10:24 24 this is an e-mail from you to a number of folks on the "to"  
02:10:29 25 line and the "CC" line.

02:10:33 1 Do you see that?

02:10:34 2 **A** I do.

02:10:34 3 **Q** And can you generally describe who these individuals  
02:10:39 4 are? Do they fall into a certain kind of area, for example,  
02:10:43 5 field leadership, or what group generally were the positions  
02:10:46 6 that they held?

02:10:47 7 **A** In the "to" line, everybody there is a divisional  
02:10:53 8 manager except for Paul Beahm, Susanne Hiland, and Warren  
02:11:01 9 Moore. They were in higher leadership in the Pharmacy  
02:11:06 10 Health and Wellness area.

02:11:11 11 The people in the CC, those individuals were practice  
02:11:15 12 Compliance folks, mostly my peers and supervisors.

02:11:19 13 **Q** And in your e-mail on February 13, 2015, you write,  
02:11:24 14 "Here are the refusal to fill notifications sent to the DEA  
02:11:27 15 in the month of January 2015. Feel free to share with your  
02:11:31 16 teams as you see appropriate."

02:11:32 17 Did I read that correctly?

02:11:34 18 **A** You did.

02:11:34 19 **Q** And what did you mean by "Feel free to share with your  
02:11:38 20 teams as you see appropriate"?

02:11:40 21 **A** This report would have included information about the  
02:11:45 22 refusal to fills that had been reported from their area of  
02:11:49 23 supervision, and there are some stores that reported many  
02:11:54 24 refusal to fills and other stores that would report a few  
02:11:58 25 refusal to fills. And I would encourage them to focus on

02:12:03 1 both, actually to find out what's going on in terms of, hey,  
02:12:06 2 this store is sending in a lot of refusal to fills, what's  
02:12:09 3 going on; and, number, two, if a store isn't filling out  
02:12:13 4 any, are they aware of the policies and the support that  
02:12:16 5 Walmart gives them in refusing to fill prescriptions after  
02:12:18 6 they exercise their professional judgment.

02:12:20 7 **Q** And how often did you circulate this refusal to fill  
02:12:24 8 information to the Health and Wellness leadership team?

02:12:28 9 **A** It was regularly, most of the time monthly, but I may  
02:12:33 10 have missed one or two.

02:12:34 11 **Q** Mr. Nelson, you worked for Walmart for about 33 years;  
02:12:41 12 is that right?

02:12:41 13 **A** That is correct.

02:12:42 14 **Q** Did you take pride in your work at Walmart?

02:12:48 15 **A** I enjoyed working for Walmart very much.

02:12:50 16 **Q** And Mr. Lanier asked you a series of questions where I  
02:12:54 17 think he was trying to describe in his own words your  
02:12:59 18 professional life, and I think you were clear on the record  
02:13:03 19 as to how you would like that terminology to be used.

02:13:07 20 But you referenced something that I just wanted to  
02:13:10 21 clarify, that essentially who you thought of -- again, if I  
02:13:15 22 misstate this, I apologize, but your professional life is  
02:13:18 23 more than just your work at Walmart. And I wanted to know  
02:13:21 24 what you meant by that.

02:13:21 25 Are you referring to things in the community or other

02:13:23 1 things? What did you mean?

02:13:25 2 **A** Yes, I meant other things related to the practice of  
02:13:28 3 pharmacy. For example, doing talks at schools about the  
02:13:35 4 profession of pharmacy, doing information about Medicaid or  
02:13:43 5 Medicare enrollment processes that were simply to help  
02:13:46 6 educate seniors about how that process works as a  
02:13:49 7 pharmacist, not as a Walmart representative.

02:13:52 8 Also participating in professional organizations that  
02:13:57 9 dealt with either diversion of drugs or potentially practice  
02:14:04 10 issues that faced pharmacies from time to time, such as  
02:14:08 11 immunizations and what that would look like. Again, not  
02:14:11 12 representing Walmart, representing the profession of  
02:14:14 13 pharmacy and what that might look like.

02:14:15 14 **Q** Would you consider yourself to be active in your  
02:14:18 15 community?

02:14:21 16 **A** As active as I could be, yes.

02:14:23 17 **Q** And can you explain some of the things that you were  
02:14:27 18 active in in your community on a personal level?

02:14:34 19 **A** As I said, going out giving speeches, maybe talks;  
02:14:36 20 speeches might not be the right terminology, but talks about  
02:14:39 21 the profession of pharmacy and the types of things that high  
02:14:43 22 school students could look forward to if they were pursuing  
02:14:46 23 a career in pharmacy, or in some cases it would even turn  
02:14:48 24 into pharmacy technician situations because, again, as the  
02:14:51 25 profession was growing, technicians were certainly needed in

02:14:56 1 larger numbers, and it was a good career path for  
02:14:58 2 individuals to become a technician or become a pharmacist.

02:15:01 3 I also participated in organizations about diverting  
02:15:06 4 drugs such as the National Association of Drug Diversion  
02:15:10 5 Investigators. I participated in that not as a Walmart  
02:15:12 6 representative but as a representative of the community of  
02:15:15 7 pharmacy and what that would look like as to how pharmacists  
02:15:19 8 could interact with that team or that group of individuals  
02:15:22 9 in order to better reach a common goal, which would be  
02:15:27 10 reduce diversion of prescription medications.

02:15:45 11 (End of video.)

02:15:49 12 THE COURT: I take it that concludes  
02:15:52 13 Mr. Nelson?

02:15:53 14 MR. LANIER: No, I think we have our  
02:15:54 15 redirect -- or recross, Your Honor.

02:15:56 16 THE COURT: That's what I thought.

02:15:58 17 MR. LANIER: I apologize. But it's close.

02:16:05 18 - - - - -

02:16:07 19 **Q** Sir, I have in front of you what I'm marking as  
02:16:10 20 Exhibit 39. It's Walmart 448. It's your confidential  
02:16:14 21 general release and settlement agreement that you entered  
02:16:16 22 into with Walmart.

02:16:19 23 Do you remember this document?

02:16:22 24 **A** Yes, sir, I remember this document.

02:16:23 25 **Q** It's got your signature on the back, doesn't it?

02:16:26 1 **A** Yes, sir.

02:16:27 2 **Q** It's got the severance payment where Walmart paid you  
02:16:31 3 \$124,000, doesn't it?

02:16:33 4 **A** Okay. Yes, sir, I see it.

02:16:35 5 **Q** And then if you go to page 5, you'll see paragraph 11.  
02:16:38 6 It's got a clause that says you've got to cooperate with the  
02:16:41 7 company, doesn't it?

02:16:42 8 **A** Yes, sir, it does say that.

02:16:46 9 **Q** It says, "Associate," that's you, "may from time to  
02:16:50 10 time after the termination date be asked to testify or  
02:16:53 11 provide information to Walmart in connection with  
02:16:56 12 employment-related or other legal proceedings involving  
02:16:59 13 Walmart. You will provide reasonable assistance to and will  
02:17:02 14 cooperate with Walmart in connection with any Government  
02:17:04 15 investigation, any litigation, arbitration, judicial,  
02:17:11 16 nonjudicial, or administrative proceedings that may exist or  
02:17:15 17 may arise regarding events about which you have knowledge."

02:17:19 18 That's what it says, isn't it?

02:17:21 19 **A** That's what the document says, yes, sir.

02:17:22 20 **Q** It says Walmart will compensate you for your  
02:17:25 21 reasonable travel and other expenses incidental to that,  
02:17:29 22 won't it?

02:17:29 23 **A** That's what the document says.

02:17:33 24 **Q** And then Walmart's paying for both of your lawyers  
02:17:36 25 that are representing you today, aren't they?

02:17:38 1 **A** That is my understanding.

02:17:41 2 **Q** All right. Next issue.

02:17:43 3 Dr. Diamond. You were asked questions earlier about  
02:17:51 4 Exhibit 30, which is the Walmart 246 tab. This is the one  
02:17:58 5 where Dr. Diamond was talked about, and it said, please help  
02:18:04 6 us. And then Ms. Fumerton also asked you about that.

02:18:08 7 Remember?

02:18:08 8 **A** Yes.

02:18:09 9 **Q** All right. In that regard, I'd like to go over some  
02:18:13 10 of her questions and look at them.

02:18:15 11 First of all, if we just consider the refusal to fill  
02:18:19 12 forms in general, applying to Dr. Diamond, do you have a  
02:18:26 13 clue how many refusal to fill forms would have come in if  
02:18:32 14 you'd instructed the pharmacists they had to refuse if they  
02:18:36 15 couldn't ensure the proper legitimacy of the prescription?

02:18:41 16 **A** I have no idea, sir.

02:18:49 17 **Q** But instead, you got one; is that right?

02:18:56 18 **A** I believe that's what the document states.

02:18:59 19 **Q** And you sent out the usual message of "you have the  
02:19:09 20 ability not to do it, but no blanket refusal," right?

02:19:14 21 **A** That's what the direction was, yes, sir.

02:19:15 22 **Q** And in regard to this, you were also asked, "Did you  
02:19:20 23 ever reprimand pharmacists for submitting a refusal to fill  
02:19:23 24 form."

02:19:24 25 Remember that question?



02:19:25 1 **A** I do.

02:19:25 2 **Q** Sir, you didn't have authority to reprimand  
02:19:28 3 pharmacists. That wasn't in your job title, was it?

02:19:32 4 **A** Not me personally, no.

02:19:34 5 **Q** Okay. And you never instructed them to file refusal  
02:19:38 6 to fill forms, did you?

02:19:39 7 **A** That would be incorrect.

02:19:42 8 **Q** So you did instruct people, you have to file an RTF  
02:19:48 9 form?

02:19:48 10 **A** If they chose not to fill prescriptions, yes, sir.

02:19:51 11 **Q** Oh, right, right, right.

02:19:53 12 But you never instructed them not to fill a  
02:19:55 13 prescription, did you?

02:19:56 14 **A** I may have -- I may have told people not to fill a  
02:19:58 15 prescription after we conversed about it over the phone and  
02:20:01 16 said, "If it was up to me, I would not fill that  
02:20:04 17 prescription. In my professional judgment, I would not fill  
02:20:06 18 that."

02:20:06 19 **Q** Well, that doesn't mean that they can't fill it, does  
02:20:10 20 it?

02:20:11 21 **A** That's correct.

02:20:11 22 **Q** Because you've said you don't have that authority, at  
02:20:15 23 least when Ms. Fumerton's asking you questions, right?

02:20:17 24 **A** I don't have the authority to -- to hold them  
02:20:22 25 accountable.

02:20:23 1 Q And then Ms. Fumerton showed you Exhibit Number 37.

02:20:28 2 Do you have Exhibit Number 37 there?

02:20:30 3 A I believe so.

02:20:34 4 Q This is one where someone says -- look at this --

02:20:39 5 "We're afraid of getting fired for refusing to fill, but now  
02:20:50 6 I understand it's for our protection."

02:20:52 7 Do you see that?

02:20:53 8 A That's what the document says.

02:20:56 9 Q I mean, what kind of atmosphere did you have for your  
02:21:02 10 pharmacists that they're afraid of getting fired for  
02:21:04 11 refusing to fill?

02:21:05 12 A I would not have been aware of what the atmosphere was  
02:21:11 13 in that pharmacy.

02:21:12 14 Q Well, did you fix the fear of being fired atmosphere?  
02:21:15 15 Did you hold a nationwide conference?

02:21:20 16 A I'm not aware of any reason to have held such a  
02:21:23 17 meeting. This particular pharmacy felt that way.

02:21:28 18 Q This particular pharmacy was afraid of getting fired  
02:21:30 19 for refusing to fill prescriptions.

02:21:34 20 You don't think that that should catalyze you and make  
02:21:37 21 you say, hey, time out, I'll send an e-mail out to everybody  
02:21:42 22 that says, don't ever worry about getting fired; you do  
02:21:46 23 what's best for the population.

02:21:52 24 Did you ever even think of doing that?

02:21:55 25 A That's what the e-mails were that were being sent out,

02:21:58 1 telling people they had the ability to refuse to fill  
02:22:00 2 prescriptions.

02:22:00 3 **Q** No.

02:22:01 4 **A** That was the intent of those e-mails.

02:22:02 5 **Q** So you think you were addressing the fear of getting  
02:22:05 6 fired by telling people, you have the ability to refuse to  
02:22:11 7 fill if you choose to. That's -- saying, don't worry about  
02:22:20 8 being fired; we want you to follow the law?

02:22:23 9 **A** Sir, I don't know if people felt like they were going  
02:22:25 10 to be fired or not. The purpose of the e-mail was to let  
02:22:28 11 them know that Walmart supported them in their decisions and  
02:22:32 12 using professional judgment.

02:22:34 13 **Q** All right. Next subject.

02:22:36 14 Exhibit 33. This is the one but explaining  
02:22:45 15 Dr. Randall Wade and all of the stuff about whether or not  
02:22:49 16 his prescriptions should be blanketly refused.

02:22:54 17 Do you remember Ms. Fumerton asking you about these?

02:22:58 18 Well, Ms. Fumerton asked you in regards to all of  
02:23:02 19 that: State boards of pharmacy don't allow a permit holder  
02:23:05 20 to take action limiting the filling of a prescription, and  
02:23:09 21 you affirmed her in that.

02:23:10 22 Remember?

02:23:15 23 **A** Yes, I do recall that.

02:23:16 24 **Q** Says who? Where did you get that from?

02:23:21 25 **A** It had been my experience in sitting in some phone

02:23:24 1 conversations that when my director, Tim Koch, would talk to  
02:23:28 2 boards of pharmacy, one particular Board of Pharmacy, I  
02:23:32 3 think it was either North Carolina or South Carolina, told  
02:23:36 4 them that -- told him that that would not be looked highly  
02:23:39 5 upon by a Board of Pharmacy if the permit holder told the  
02:23:42 6 pharmacist -- or told the pharmacy they could not fill a  
02:23:45 7 prescription for a particular prescriber since that was  
02:23:47 8 interfering with their professional judgment.

02:23:49 9 **Q** Well, sir, you'd been told something very different by  
02:23:52 10 the DEA, hadn't you?

02:23:54 11 **A** Yeah, I -- I don't -- I don't even recall that  
02:23:57 12 document even though you showed it to me, I mean, I didn't  
02:24:00 13 have a habit of reading the *Federal Register*, I can tell you  
02:24:03 14 that.

02:24:03 15 **Q** Well, it got sent to you by the DEA. "Nice talking  
02:24:10 16 with you." And you were directed to page -- whoops,  
02:24:13 17 directed to page 28.

02:24:16 18 And page 28 specifically says, "A pharmacist has a  
02:24:19 19 corresponding responsibility under federal law. The  
02:24:27 20 corresponding responsibility to ensure the dispensing of  
02:24:30 21 valid prescriptions extends to the pharmacy itself."

02:24:33 22 Do you see that?

02:24:39 23 **A** I see what it says.

02:24:40 24 **Q** So the idea that the permit holder can't take action,  
02:24:45 25 the DEA says they have an obligation to, right?

02:24:50 1 **A** Yeah, I'm not aware of where it says the permit holder  
02:24:54 2 is required to take action.

02:24:55 3 **Q** Sir, it specifically said on page 28, what I just  
02:25:00 4 read, that the corresponding responsibility extends to the  
02:25:03 5 pharmacy itself.

02:25:07 6 Do you see that?

02:25:08 7 **A** In regards to that particular one, that particular  
02:25:11 8 Medicine Shoppe in Jonesborough, yes, I see that.

02:25:16 9 **Q** Well, no, no, no. That's the case that's referenced  
02:25:19 10 there. It doesn't say that applies to only one. That  
02:25:28 11 says -- that's just giving you a reference for it so that  
02:25:30 12 you know where it came out. But that's been around since  
02:25:38 13 2008.

02:25:38 14 Do you see that?

02:25:39 15 **A** Again, I see what that particular document says, but I  
02:25:42 16 don't know the particulars of that case.

02:25:43 17 **Q** So when you say that state board pharmacies don't  
02:25:46 18 allow permit holders to take action limiting, you got  
02:25:48 19 nothing on that, you can't give me one person's name who  
02:25:51 20 told you that, can you?

02:25:52 21 **A** Yeah, no one specifically told me that the boards of  
02:25:55 22 pharmacy don't allow permit holders to take action against,  
02:25:58 23 you know, filling -- or they don't allow blanket refusals, I  
02:26:01 24 think is the thing we're looking for.

02:26:03 25 But in sitting in conversation with Tim Koch, my

02:26:06 1 supervisor, and a Board of Pharmacy, they said that would  
02:26:09 2 not be looked highly upon. And I believe it was North  
02:26:12 3 Carolina or South Carolina. So it seemed legitimate.

02:26:16 4 **Q** It wouldn't be looked highly upon. That doesn't mean  
02:26:21 5 it doesn't allow it, does it?

02:26:22 6 **A** It sounds like they wouldn't be happy about it.

02:26:25 7 **Q** I'm going to show you now a document that's Walmart  
02:26:28 8 249. I'm marking it as Exhibit Number 40.

02:26:35 9 **A** I just pulled it out of the package, yes, sir. Go  
02:26:38 10 ahead.

02:26:38 11 **Q** It's from you right before you left, looks like.  
02:26:42 12 Do you see that?

02:26:43 13 **A** Yes, sir, I see it.

02:26:53 14 **Q** All right. Here you specifically say, "It takes  
02:27:00 15 hundreds of refusals to fill to be considered for a  
02:27:05 16 corporate block. It's a huge deal, and we only have a  
02:27:09 17 handful that have been issued a corporate block."

02:27:14 18 Do you see that?

02:27:18 19 **A** I see it.

02:27:19 20 **Q** Well, now, what are we supposed to believe? That the  
02:27:22 21 state Board of Pharmacy has said you're not allowed to do  
02:27:24 22 one, or that you did it but you just had a policy of a  
02:27:28 23 hundred of them before you'd consider doing it? Which do we  
02:27:33 24 believe today?

02:27:33 25 **A** Well, just policies and procedures do change over a

02:27:36 1 period of time, and Walmart's policy on corporate blocks  
02:27:40 2 apparently was changing at that time.

02:27:44 3 **Q** Yeah. So now all of a sudden y'all can do something  
02:27:47 4 that you've already sworn under oath the state Board of  
02:27:50 5 Pharmacy wouldn't allow you to do.

02:27:51 6 Is that what I understand?

02:27:54 7 **A** At the time that guidance was being sent out about the  
02:27:57 8 state boards of pharmacy not allowing that, that was  
02:27:59 9 accurate information.

02:28:02 10 Sir, I was not involved in the -- I was not involved  
02:28:05 11 in the decision-making of corporate blocks. I don't -- I  
02:28:08 12 don't know how it was determined.

02:28:09 13 **Q** I mean, you understand you're under oath here, right?

02:28:13 14 **A** Yes, sir, I'm answering truthfully.

02:28:17 15 **Q** Okay. I mean, you say in 2017, just seven months  
02:28:23 16 later, that a handful have already been issued.

02:28:31 17 So what do you want us to believe, that it's not  
02:28:34 18 allowed or the company's got a policy on it?

02:28:41 19 **A** The company was putting out a policy on corporate  
02:28:45 20 blocks.

02:28:45 21 **Q** And then Ms. Fumerton also asked you, she said, no one  
02:28:48 22 said you can do a corporate block, and she defined it as  
02:28:55 23 refusal to fill.

02:28:56 24 Do you remember that?

02:28:57 25 **A** I believe she asked me if any state Board of Pharmacy

02:29:00 1 said you could do a corporate block.

02:29:02 2 **Q** Yeah, because the company can do it. You already know  
02:29:05 3 that. You're doing it, right?

02:29:06 4 **A** I believe she was asking me in regards to a 2014 or  
02:29:10 5 2015 e-mail.

02:29:11 6 **Q** Huh. Well, regardless, even if you take it at that,  
02:29:16 7 the DEA isn't teaching you how to do your job. That's not  
02:29:19 8 their responsibility, is it?

02:29:21 9 **A** The DEA does teach us some things about how to do our  
02:29:25 10 jobs.

02:29:26 11 **Q** Well, I mean, she sent up the e-mail that said read  
02:29:29 12 page 28, but you said you didn't read that, remember?

02:29:32 13 **A** Again, that was one particular case. I don't know  
02:29:34 14 that that particular case made it into the CFR.

02:29:39 15 **Q** And you, sir, made false statements when you told  
02:29:42 16 people you could not issue a refusal to fill?

02:29:47 17 **A** No, sir, I did not. We were talking about times prior  
02:29:50 18 to 2017.

02:29:52 19 **Q** Yeah. I asked you on direct for six hours,  
02:29:56 20 repeatedly, who ever told you the state board of pharmacies  
02:30:02 21 won't let you issue a refusal to fill, and you told me, I  
02:30:07 22 don't have a clue.

02:30:08 23 Remember?

02:30:09 24 **A** I told you no one specifically told me not -- told me  
02:30:15 25 to say that the state boards of pharmacy did not allow



02:30:19 1 blanket refusals.

02:30:20 2 **Q** I asked you what you based that on, and you said it's  
02:30:23 3 just Walmart policy. I said, can you name me any state  
02:30:26 4 board? No.

02:30:28 5 Remember?

02:30:29 6 **A** I don't recall that.

02:30:30 7 **Q** As a corporate block?

02:30:32 8 **A** I have no idea if they were issuing refusal to fills.  
02:30:36 9 Some of them were doing corporate blocks.

02:30:39 10 **Q** Corporate blocks saying, no, nobody's going to fill a  
02:30:43 11 prescription for this doctor.

02:30:45 12 Others were doing it, weren't they?

02:30:46 13 **A** It was being reported that other companies were doing  
02:30:51 14 that.

02:30:51 15 **Q** Isn't it true the pharmacists, at least some that we  
02:30:54 16 know of, were feeling pressure to fill the prescriptions?

02:30:59 17 **A** That is correct. That's what he said.

02:31:03 18 **Q** Next subject.

02:31:04 19 You said patient safety has always been the highest  
02:31:09 20 priority. Patient safety, number 1.

02:31:12 21 Remember that?

02:31:13 22 **A** That is correct.

02:31:16 23 **Q** Sir, I'm looking at the evidence. That's the best  
02:31:23 24 thing to look at for something like this, isn't it?

02:31:25 25 **A** Depends upon your definition of patient safety.

02:31:30 1 Q I mean, we've been reading that with all of these  
02:31:41 2 different documents we looked at, all of the investigations,  
02:31:44 3 all of the settlements, the fear of losing the job.

02:31:49 4 Don't you think maybe instead of just saying it, it  
02:31:52 5 would be helpful for the jury to look at the evidence?

02:31:54 6 A "Patient safety" represents to me filling  
02:31:58 7 prescriptions accurately, not making prescription medication  
02:32:01 8 errors; making sure that the patient gets the medication the  
02:32:05 9 doctor intended, and that they follow the course of action  
02:32:07 10 that the doctor had prescribed. It's not just about  
02:32:10 11 controlled substances.

02:32:12 12 Q Oh, and I'm not fussing that, sir. And I'm sure  
02:32:15 13 you've got a lot of pharmacists that do a real good job.  
02:32:18 14 And I'm sure you've got a lot of pharmacists that put safety  
02:32:21 15 first.

02:32:21 16 I'm talking about within the company itself, what was  
02:32:24 17 driving the decisions to send out and -- and all of this  
02:32:28 18 evidence we've looked at.

02:32:29 19 Don't you think it's fair just to say "look at the  
02:32:32 20 evidence"?

02:32:33 21 A Walmart supported patient safety in large ways, with  
02:32:36 22 training programs, seminars, taught people how to fill  
02:32:39 23 prescriptions more accurately and taking their time to  
02:32:41 24 focus. So I believe Walmart did a lot to help with patient  
02:32:44 25 safety.

02:32:45 1 Q And hired a man to drive compliance with the  
02:32:48 2 memorandum of agreement who's never had any experience in  
02:32:51 3 driving compliance before?

02:32:54 4 A I can't answer to why Walmart chose me for that  
02:32:57 5 particular position.

02:32:58 6 Q Well, your CV didn't emphasize nearly as much patient  
02:33:04 7 safety as it did profits and losses, did it?

02:33:09 8 A The CV was not the same job that I did, that I was  
02:33:12 9 applying for.

02:33:13 10 Q And then on these refusal to fill forms, did you know  
02:33:19 11 Walmart did not have a system to share those forms with its  
02:33:21 12 pharmacists until after 2017?

02:33:25 13 A I'm not aware of any requirement to share information  
02:33:27 14 between stores.

02:33:28 15 Q Sir, do you understand though it's not always what  
02:33:31 16 you're required to do; sometimes it's what you ought to do?

02:33:34 17 A It's real easy to look through glasses backwards.  
02:33:39 18 It's hard to say what to do at the particular time.

02:33:41 19 Q All right. And then the last area, Exhibit 35.  
02:33:47 20 Ms. -- in reply to Ms. Fumerton's questions, you said,  
02:33:51 21 "Driving sales is Walmart-speak for go out there and get  
02:33:55 22 them, tiger."

02:33:56 23 Is that right?

02:33:57 24 A I did make the comment about "go out there and get  
02:34:00 25 them, tiger." David Reitnauer is a personal friend of mine

02:34:04 1 and has been for many years. You look at the document that  
02:34:10 2 Ms. Fullerton [sic] put in the record, it shows that there  
02:34:13 3 were some e-mails after that that talk about saying hello to  
02:34:16 4 his wife and his kids, and so forth. And I've known David  
02:34:18 5 and his wife for years, so it's -- our conversations were  
02:34:23 6 more open and direct about different things that had nothing  
02:34:27 7 to do always with Walmart or Sam's.

02:34:29 8 **Q** Well, yeah, but this is pretty open and direct, and  
02:34:32 9 it's got something pretty direct to do with Walmart and  
02:34:34 10 Sam's where you say, "We haven't invested a great amount of  
02:34:38 11 effort in doing analysis. Driving sales and patient  
02:34:42 12 awareness is a far better use of our market director's and  
02:34:45 13 market manager's time."

02:34:46 14 That's pretty Walmart direct, isn't it?

02:34:51 15 **A** Did some things after that time frame to share the  
02:34:57 16 information with other stores, so they were making changes.  
02:35:00 17 We just didn't make changes during the MOA.

02:35:03 18 **Q** No, that's not what we're talking about here. We're  
02:35:06 19 talking about -- you say driving sales, that that's some  
02:35:10 20 normal code word within Walmart for "go out there and get  
02:35:14 21 them, tiger," right?

02:35:22 22 Walmart-speak I think you called it?

02:35:24 23 **A** Right, it's not -- it's not against the law to go out  
02:35:28 24 and grow your business.

02:35:29 25 **Q** And, oh, I'm not fussing it. It's not against the

02:35:32 1 law. I'm just asking if it reveals the motive.

02:35:38 2 "Don't invest a great amount of time doing analysis on  
02:35:41 3 refusals to fill. Go out there and grow your business.

02:35:45 4 Because that's what you mean, go grow your business,  
02:35:47 5 right?

02:35:48 6 **A** Indirectly, that's exactly what it would have said, go  
02:35:52 7 grow your business.

02:35:53 8 **Q** Okay.

02:35:54 9 MR. LANIER: Pass the witness.

02:35:54 10 (Video deposition concluded.)

02:36:01 11 MR. LANIER: And Your Honor, I believe that  
02:36:03 12 ends the tender for the deposition from both sides.

02:36:06 13 THE COURT: Ladies and gentlemen, I think it's  
02:36:09 14 a good time to take a break now. We're having another  
02:36:13 15 deposition, but it's a good time to take a break now, so  
02:36:17 16 we'll take 15 minutes, and then we'll have one more  
02:36:19 17 deposition witness today.

02:36:46 18 (The jury is not present.)

02:36:48 19 MR. LANIER: Your Honor, the next deposition  
02:36:49 20 time play is 1:52 minutes.

02:36:52 21 THE COURT: I was going to ask you.

02:36:54 22 MR. LANIER: That will put us at about --

02:36:56 23 THE COURT: Two hours. Okay, that's fine.

02:36:59 24 MR. LANIER: Thank you, Judge.

02:37:07 25 (Recess taken at 2:37 p.m.)

02:59:31 1 (In open court at 2:59 p.m.)

02:59:33 2 MR. WEINBERGER: Your Honor, just one  
02:59:35 3 housekeeping matter briefly before the jury.

02:59:37 4 In a video deposition such as Mr. Nelson's, we were  
02:59:43 5 using exhibit numbers.

02:59:44 6 THE COURT: Right, a lot of different numbers.

02:59:45 7 MR. WEINBERGER: They don't necessarily  
02:59:47 8 correlate with the P numbers.

02:59:49 9 And we actually have a chart that's going to do that.  
02:59:52 10 And my suggestion to be potentially that you might want to  
02:59:58 11 inform the jury that at some point there -- because they may  
03:00:01 12 be writing down exhibit numbers in their notes.

03:00:04 13 THE COURT: Well, why don't you work out among  
03:00:07 14 you which documents are going to be admitted, because,  
03:00:11 15 again, if they aren't admitted, it doesn't really matter.

03:00:14 16 MR. WEINBERGER: True.

03:00:15 17 THE COURT: And do an agreement. And then if  
03:00:19 18 you agree on it, just give it to me, and I'll read the  
03:00:21 19 numbers to the jury.

03:00:22 20 MR. LANIER: The plan B would be, Your Honor,  
03:00:24 21 to when we admit the document, put Deposition Exhibit Number  
03:00:29 22 stickers on it so they could do it that way themselves, but  
03:00:33 23 if this is easier --

03:00:34 24 THE COURT: Right, in a meaningful way, yes.

03:00:38 25 MR. LANIER: Thank you, Judge.

**Tsipakis - (By Video Deposition)**

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03:02:10 1 (The jury is present at 3:02 p.m.)

03:02:13 2 THE COURT: Okay. Please be seated, ladies  
03:02:14 3 and gentlemen. We now have our second video deposition.

03:02:17 4 MR. LANIER: Yes, Your Honor. And this will  
03:02:20 5 be the video deposition of James Tsipakis. And Mr. Tsipakis  
03:02:28 6 worked for Giant Eagle, and he will be testifying he was  
03:02:30 7 their head of Pharmacy.

03:02:33 8 The deposition play, there's an hour seven from the  
03:02:37 9 plaintiffs' side and then 15-plus minutes from the defense  
03:02:40 10 side, and then we've got eight minutes, and then they've got  
03:02:43 11 21 minutes. So it's a total of an hour and 52 minutes, Your  
03:02:47 12 Honor.

03:02:51 13 (Video played.)

03:02:51 14 DEPOSITION TESTIMONY OF JAMES TSIPAKIS

03:02:53 15 **Q** Good morning. State your name, please.

03:02:54 16 **A** James Tsipakis.

03:02:57 17 **Q** And Mr. Tsipakis, who do you work for?

03:03:01 18 **A** Giant Eagle.

03:03:01 19 **Q** What's your position with Giant Eagle?

03:03:03 20 **A** Head of Pharmacy for Giant Eagle.

03:03:04 21 **Q** You understand you're here to testify today on behalf  
03:03:10 22 of HBC?

03:03:11 23 **A** I do.

03:03:11 24 **Q** And do you understand you've been designated by HBC as  
03:03:15 25 a 30(b)(6) witness to testify on behalf of the company, HBC?

03:03:20 1 **A** I do.

03:03:20 2 **Q** So you understand the answers that you give today will  
03:03:23 3 not be Jim Tsipakis's answers but they would be HBC's  
03:03:27 4 answers?

03:03:28 5 **A** I do.

03:03:31 6 **Q** Now, you mentioned you were employed by Giant Eagle,  
03:03:33 7 correct?

03:03:33 8 **A** Yes.

03:03:34 9 **Q** Explain to me your understanding of the relationship  
03:03:36 10 between Giant Eagle and HBC.

03:03:39 11 **A** Giant Eagle as a company owns HBC.

03:03:43 12 **Q** How long have you been with Giant Eagle?

03:03:46 13 **A** Since late October 2017.

03:03:50 14 **Q** Okay. Do you understand that this deposition notice  
03:03:54 15 will cover activity going back to 2006?

03:04:00 16 **A** Yes.

03:04:01 17 **Q** Okay. And have you taken steps to prepare to be able  
03:04:05 18 to answer questions about HBC's conduct going back to 2006?

03:04:12 19 **A** Yes.

03:04:19 20 **Q** What did you do to prepare?

03:04:20 21 **A** Met with Giant Eagle's internal and external counsel.  
03:04:24 22 Spoke to employees within our organization. Looked through  
03:04:27 23 documents and did a diligence.

03:04:32 24 **Q** At some period of time, did HBC have a license to  
03:04:35 25 distribute Schedules III, IV, and V controlled substances?



03:04:38 1 **A** Yes.

03:04:39 2 **Q** What period of time?

03:04:40 3 **A** From -- my recollection is from 2009, late 2009,  
03:04:51 4 through early 2016.

03:04:59 5 **Q** So, Mr. Tsipakis, what's your understanding of the  
03:05:02 6 time period in which HBC did, in fact, distribute Schedules  
03:05:05 7 III, IV, and V controlled substances?

03:05:08 8 **A** From late 2009 to early 2016.

03:05:12 9 **Q** And to what businesses or entities did HBC distribute  
03:05:16 10 controlled substances?

03:05:16 11 **A** To our own stores, Giant Eagle pharmacies.

03:05:20 12 **Q** During the time period that HBC distributed Schedule  
03:05:25 13 III controlled substances, would it be accurate to say that  
03:05:29 14 opioids, and more specifically, hydrocodone combination  
03:05:32 15 products, was one of the drugs that HBC distributed?

03:05:40 16 **A** HBC only distributed hydrocodone products as a  
03:05:44 17 Schedule III. Once it was reclassified, they no longer  
03:05:49 18 distributed those products.

03:05:49 19 **Q** Can you give me some examples of the types of  
03:05:53 20 hydrocodone combination products that HBC would have  
03:05:55 21 distributed?

03:05:55 22 **A** Hydrocodone-containing products, generic Vicodin  
03:06:04 23 products. Certainly cough syrups that had hydrocodone in  
03:06:14 24 it, different formulations and different generic names,  
03:06:17 25 et cetera. Those types of products.

03:06:18 1 Q Okay. And Vicodin is a product that's a combination  
03:06:20 2 of hydrocodone and acetaminophen?

03:06:24 3 A Correct.

03:06:25 4 Q Also Lortab, the same type of product?

03:06:28 5 A Yes.

03:06:28 6 Q Norco I think is the same type of product?

03:06:32 7 A Yes.

03:06:32 8 Q Okay. And those are all types of drugs that HBC would  
03:06:36 9 have distributed from 2009 until 2014, when the schedules  
03:06:40 10 changed?

03:06:41 11 A Yes.

03:06:45 12 Q We certainly agree that HBC had an obligation to  
03:06:47 13 design a system, operate a system that would disclose to the  
03:06:52 14 registrant, HBC, suspicious orders of controlled substances,  
03:06:57 15 correct?

03:06:57 16 A Yes.

03:07:03 17 Q That obligation was in place whether we're talking  
03:07:06 18 about Schedule II controlled substances or whether we're  
03:07:08 19 talking about Schedule III controlled substances, correct?

03:07:12 20 A Correct.

03:07:14 21 Q And HBC was aware of that back in 2009?

03:07:23 22 A Yes.

03:07:23 23 Q So my question to you, and if I said this wrong last  
03:07:26 24 time, I'm sorry, but I'm asking whether or not HBC had any  
03:07:29 25 written suspicious order monitoring program, policy, or

03:07:34 1 procedure from 2006 until July 31, 2014.

03:07:44 2 **A** Written policies? You're asking specific written  
03:07:47 3 policies?

03:07:48 4 **Q** Correct.

03:07:48 5 **A** I don't know.

03:07:54 6 **Q** In the 40 to 50 hours that you spent preparing to  
03:07:57 7 testify today on, one of the topics being your past and  
03:08:05 8 present suspicious order monitoring systems program policy  
03:08:09 9 and procedures, you don't know whether or not HBC ever had a  
03:08:12 10 written suspicious order monitoring policy or procedure  
03:08:16 11 prior to July 31, 2014?

03:08:23 12 **A** I can't with certainty tell you they did or they  
03:08:25 13 didn't. That's what I'm telling you.

03:08:26 14 **Q** That's fair.

03:08:28 15 We talked earlier about you had a duty to prepare for  
03:08:32 16 the deposition today, correct?

03:08:33 17 **A** Yes.

03:08:34 18 **Q** Okay. You took that duty seriously?

03:08:35 19 **A** Absolutely.

03:08:36 20 **Q** Okay. You made a good-faith effort to be able to come  
03:08:39 21 in here and be prepared to testify and be prepared to answer  
03:08:42 22 all the questions that you were supposed to be prepared to  
03:08:45 23 answer, correct?

03:08:45 24 **A** Of course.

03:08:50 25 **Q** And you spent 40 to 50 hours getting ready for this?

03:08:53 1 **A** Yes.

03:08:54 2 **Q** Okay. And you talked to different subject matter  
03:08:57 3 experts within Giant Eagle or HBC about the topics that you  
03:08:59 4 needed to testify on today?

03:09:00 5 **A** Yes.

03:09:01 6 **Q** Okay. And as a result of that preparation, you don't  
03:09:03 7 know whether or not HBC ever had a written suspicious order  
03:09:07 8 monitoring policy or procedure in place from 2006 through  
03:09:12 9 July 31, 2014; is that correct?

03:09:15 10 **A** I couldn't find whether there was or there wasn't  
03:09:18 11 written policies. For that time frame that you're asking  
03:09:20 12 me, I'll answer it again: I don't know.

03:09:23 13 **Q** HBC distributed hydrocodone combination products from  
03:09:28 14 November 2009 through approximately October 2014, correct?

03:09:36 15 **A** Correct.

03:09:36 16 **Q** As far as you know, as far as HBC knows, the first  
03:09:40 17 suspicious order monitoring policy or procedure that they  
03:09:43 18 had was August 1, 2014?

03:09:46 19 **A** Again, the first one that I'm able to produce written  
03:09:52 20 was August 2014.

03:09:54 21 **Q** But it's more than that. It's the first one you know  
03:09:56 22 about that's written, correct?

03:10:02 23 **A** It's the first written policy. It doesn't mean there  
03:10:06 24 wasn't others. I don't know.

03:10:07 25 **Q** It's the first written policy that you know about,

03:10:13 1 correct?

03:10:13 2 **A** Yes.

03:10:14 3 **Q** Mr. Tsipakis, I'm going to hand you what I've marked  
03:10:17 4 as Exhibit Number 12.

03:10:18 5 So the first document we see here is entitled  
03:10:24 6 "Inventory Control Suspicious Order Policy."

03:10:29 7 Do you see that?

03:10:30 8 **A** Yes.

03:10:30 9 **Q** And it actually has a Giant Eagle header on it, not an  
03:10:34 10 HBC.

03:10:34 11 Do you see that?

03:10:35 12 **A** Yes.

03:10:36 13 **Q** Again, we see on the left side that the effective  
03:10:42 14 date, so I guess the first time the policy went into place,  
03:10:44 15 was August 1, 2014.

03:10:46 16 Do you see that?

03:10:49 17 **A** Yes.

03:10:51 18 **Q** And if we go to the right-hand column, we see this is  
03:10:54 19 Version 2?

03:10:54 20 **A** Yes.

03:10:55 21 **Q** Do you see that?

03:10:56 22 And the revision date that relates to this document is  
03:10:59 23 April 9, 2015.

03:11:01 24 Do you see that?

03:11:01 25 **A** Yes.

03:11:02 1 Q Okay. And the purpose of this policy was to identify,  
03:11:07 2 investigate, record, and report suspicious pharmaceutical  
03:11:10 3 product orders, correct?

03:11:14 4 A Yes.

03:11:14 5 Q And other than the first version of this policy that  
03:11:17 6 would have come out August 1, 2014, you're not aware of any  
03:11:21 7 earlier written policy other than the one that we're looking  
03:11:23 8 at here?

03:11:24 9 A I could not find any earlier policy.

03:11:28 10 Q Okay.

03:11:29 11 A Written policy.

03:11:29 12 Q And the policy that identifies here, it says,  
03:11:34 13 "Identify individuals from Giant Eagle Sourcing, Pharmacy  
03:11:36 14 Compliance, and HBC team members, must review pharmacy  
03:11:39 15 customer orders and order trends on a regular and for-cause  
03:11:42 16 basis to identify suspicious drug orders."

03:11:45 17 Do you see that?

03:11:46 18 A Yes.

03:11:47 19 Q It goes on to say, that "Suspicious orders are blocked  
03:11:50 20 and reported to the appropriate regulatory authority within  
03:11:53 21 the specified time range."

03:11:54 22 Do you see that?

03:11:55 23 A Yes.

03:11:55 24 Q And then in the procedures below, under the second  
03:11:59 25 bullet point, it lists the criteria that are used to

03:12:03 1 determine whether or not an order is suspicious.

03:12:05 2 Do you see that?

03:12:06 3 **A** Yes.

03:12:09 4 **Q** Okay. And the first thing that it lists is "purchases  
03:12:13 5 over a threshold"?

03:12:15 6 **A** Yes.

03:12:18 7 **Q** Okay. And then it talks about "Orders of unusual  
03:12:22 8 quantities or size compared to a customer's order history."

03:12:25 9 Do you see that?

03:12:26 10 **A** Yes.

03:12:26 11 **Q** The next one is "Unique patterns of orders that differ  
03:12:30 12 from similar customers"?

03:12:31 13 **A** Yes.

03:12:31 14 **Q** And the next is "Orders outside of the normal pharmacy  
03:12:36 15 customer ordering process," correct?

03:12:39 16 **A** Yes.

03:12:39 17 **Q** Okay. And again, this is a policy that this revision  
03:12:42 18 date is April 9, 2015, correct?

03:12:45 19 **A** Yes.

03:12:51 20 **Q** So you've told me that you're unaware of any written  
03:12:54 21 suspicious order monitoring policy that HBC had from 2009  
03:12:59 22 till August 1, 2014.

03:13:02 23 Did HBC have a system prior to August 2014 that was  
03:13:07 24 designed and operated to disclose suspicious orders of  
03:13:12 25 controlled substances?

03:13:13 1 **A** Yes.

03:13:13 2 **Q** And can you describe that system for me, please?

03:13:22 3 **A** Sure. The system in our situation is a captive  
03:13:30 4 warehouse. We had tight controls over our inventory, our  
03:13:35 5 controlled substance inventory, our procedures and our  
03:13:37 6 controls at our warehouse operation, and also at our  
03:13:40 7 pharmacies, the pharmacy operation.

03:13:42 8 **Q** Let me be more specific.

03:13:43 9 Other than inventory controls, what were the controls  
03:13:49 10 that would allow HBC to identify an order as suspicious?

03:13:58 11 **A** So the warehouse, in addition to its physical security  
03:14:02 12 and controls, would also have audits that it did, daily  
03:14:06 13 audits, monthly audits. It understands the patterns of  
03:14:10 14 shipments to our locations, and it could identify deviations  
03:14:14 15 from those patterns.

03:14:21 16 **Q** How frequently were audits performed?

03:14:23 17 **A** Daily.

03:14:24 18 **Q** Okay. What was the purpose of an audit?

03:14:26 19 **A** To ensure the safety and security of the drug product.  
03:14:30 20 And again, in that closed system we talked about earlier, to  
03:14:33 21 make sure the product was not diverted, and going to its  
03:14:37 22 intended recipient.

03:14:40 23 **Q** Your testimony is that from November 2009 until the  
03:14:46 24 end of October-ish of 2014, that HBC performed daily audits  
03:14:52 25 of the warehouse?



03:14:54 1 **A** Daily audits of the counts in the warehouse, yes.

03:15:02 2 **Q** Okay. And the purpose of the counts in the warehouse  
03:15:04 3 was to make sure that everything that was supposed to be in  
03:15:07 4 the warehouse was actually there?

03:15:10 5 **A** Mm-hmm, yes.

03:15:11 6 **Q** Okay. You also mentioned that the warehouse was aware  
03:15:19 7 of ordering patterns, I think is how you said it, from the  
03:15:28 8 Giant Eagle pharmacies?

03:15:29 9 **A** Mm-hmm.

03:15:29 10 **Q** You've got say "yes".

03:15:31 11 **A** Yes. Sorry, yes.

03:15:33 12 **Q** Okay. Who at the warehouse was aware of the ordering  
03:15:36 13 patterns?

03:15:37 14 **A** So the warehouse had a superintendent of the  
03:15:40 15 warehouse. So then there was specialized, highly-trained  
03:15:43 16 individuals that worked the controlled substance cage that  
03:15:48 17 were the same folks that picked the orders day in and day  
03:15:50 18 out.

03:15:51 19 **Q** From 2009 until October 2014, was there one  
03:15:58 20 superintendent of the warehouse or were there multiple?

03:16:00 21 **A** I believe there was one.

03:16:06 22 **Q** Okay. And who was that?

03:16:07 23 **A** Walter Durr.

03:16:16 24 **Q** Okay. And so you said below Walter, there would have  
03:16:21 25 been I think what you referred to as pickers?

03:16:23 1 **A** Folks who would fulfill the orders, yes.

03:16:25 2 **Q** Okay. In laymen's terms, can you kind of describe for  
03:16:29 3 me what a picker does?

03:16:30 4 **A** Sure. They -- an order comes in, and for whatever  
03:16:33 5 product they need to get, they go to the shelf, the  
03:16:37 6 particular shelf in the warehouse, and they pick the order.

03:16:39 7 **Q** Okay. Is it as simple as walking to a shelf and  
03:16:44 8 there's a bottle of pills on the shelf, and they pick up the  
03:16:50 9 bottle?

03:16:51 10 Break it down for me, please.

03:16:53 11 **A** Yeah. There's a system certainly that there's an  
03:16:56 12 order well that generates and what each store needs or has  
03:17:00 13 requested. And then there's assistance, a device that  
03:17:04 14 they -- I don't know the exact name for it, but there's  
03:17:07 15 certainly a warehouse management system that they use. And  
03:17:11 16 it's different slotting in the warehouse, and they know  
03:17:13 17 which slot to go to and how many to pick.

03:17:15 18 **Q** Okay. And then what? They drop it in the tote and  
03:17:21 19 put it on the truck?

03:17:23 20 **A** Yes.

03:17:23 21 **Q** And approximately -- let me back up.

03:17:27 22 How many different warehouses did HBC have that were  
03:17:35 23 responsible for distributing Schedule III narcotics?

03:17:38 24 **A** There's only one warehouse.

03:17:40 25 **Q** Approximately how many pickers would have been working

03:17:46 1 under Walter Durr in the warehouse?

03:17:49 2 **A** My understanding is three to four.

03:17:50 3 **Q** Who were those people?

03:17:51 4 **A** I don't know their names.

03:17:53 5 **Q** Okay. Are any of them still there?

03:17:56 6 **A** The warehouse is no longer there anymore, so no.

03:17:59 7 **Q** Anybody else who -- I think my original question was  
03:18:07 8 who would have been aware of these patterns of shipments,  
03:18:10 9 and you told me Mr. Durr, and you told me the pickers as  
03:18:13 10 well, correct?

03:18:14 11 Anybody else that would have been aware of the  
03:18:18 12 patterns of shipments to Giant Eagle pharmacies?

03:18:22 13 **A** From the warehouse is your question?

03:18:24 14 **Q** Well, this is all getting back to identification of  
03:18:27 15 suspicious orders.

03:18:30 16 **A** Sure.

03:18:30 17 **Q** Okay? So my question is, is from HBC, who had that  
03:18:35 18 obligation to identify suspicious orders?

03:18:40 19 And I think you've identified Mr. Durr and these  
03:18:44 20 pickers, but if I'm missing somebody, I want you to tell me.

03:18:47 21 **A** So in our -- suspicious orders would have been  
03:18:53 22 identified certainly from the warehouse, certainly folks in  
03:18:56 23 corporate that were from the procurement team buying into  
03:18:59 24 the warehouse. They would know if there's any spike in  
03:19:03 25 pattern of product being demanded to be shipped to the

03:19:07 1 warehouse, et cetera.

03:19:08 2 So it's not just the warehouse. It's also the folks  
03:19:12 3 that do the procurement of these products as well would  
03:19:15 4 identify any deviation of -- if all of a sudden they're  
03:19:20 5 buying X and now they're being asked to buy Y, they would  
03:19:22 6 identify that.

03:19:23 7 **Q** Was there any written list of items that these people  
03:19:29 8 in Procurement or people like Mr. Durr, the superintendent  
03:19:34 9 of the warehouse, were supposed to be on the lookout for?

03:19:40 10 **A** Not that I could find.

03:19:41 11 **Q** Explain to me what you mean by procurement side.

03:19:43 12 **A** So from the procurement side, the folks in the  
03:19:46 13 warehouse don't do the purchasing, right? There's a group  
03:19:49 14 that does purchasing.

03:19:50 15 **Q** Okay.

03:19:50 16 **A** So those folks that do purchasing would absolutely  
03:19:52 17 know what's being bought and what's being sold.

03:19:55 18 **Q** And who were those folks from 2009 through 2014?

03:20:03 19 **A** The specific people, I don't know.

03:20:09 20 **Q** Okay. Are any of them still with the company?

03:20:17 21 **A** I don't know the folks that were involved.

03:20:21 22 **Q** Okay. Was there a list that these folks in the  
03:20:27 23 procurement or purchasing office had to be on the lookout  
03:20:33 24 for as far as trends or spikes, or anything like that, that  
03:20:36 25 they should flag and bring to somebody's attention?

03:20:39 1 **A** So you're asking if there was a specific list that I  
03:20:46 2 know of?

03:20:46 3 **Q** Sure.

03:20:47 4 **A** Not that I know of, I was able to find.

03:20:51 5 **Q** Okay. Are you aware of -- let me back up and ask you  
03:20:53 6 this.

03:20:54 7 Who did you talk to within HBC or Giant Eagle to find  
03:20:59 8 out about this policy that was in place from 2009 through  
03:21:05 9 July 2014?

03:21:06 10 **A** The policy or the system? I'm sorry.

03:21:10 11 **Q** Sorry. You're right. There's not a policy.  
03:21:13 12 The system.

03:21:13 13 **A** So in the investigative piece, the diligence, Walter  
03:21:19 14 was one of the folks that was discussed about what happened  
03:21:23 15 during this time frame. Also, folks from corporate, from  
03:21:29 16 our operations folks, pharmacy operations, as well as the  
03:21:32 17 warehouse operations.

03:21:33 18 **Q** You agree that the regulation says that HBC must  
03:21:36 19 design and operate a system, correct?

03:21:39 20 **A** Yes.

03:21:39 21 **Q** What is that system?

03:21:41 22 **A** Sure. As I mentioned earlier, it's an integrated  
03:21:45 23 system between operations, the warehouse, and our  
03:21:49 24 pharmacies.

03:21:51 25 **Q** Is there anything else you can tell me about the

03:21:53 1 system other than what you just said?

03:21:54 2 **A** So, as far as what specific -- can you be a little  
03:22:00 3 more -- as far as the system, it's an integrated approach  
03:22:02 4 between -- for us, we're a self-distributing -- we're a  
03:22:07 5 self-distributing distributor, right? So we own the stores,  
03:22:12 6 we own the warehouse, we own everything in between.

03:22:16 7 We're very different than a McKesson or a Cardinal or  
03:22:20 8 a traditional distributor. We have line of sight from the  
03:22:22 9 time products are delivered to our warehouse all the way to  
03:22:25 10 when they're dispensed to customers, patients.

03:22:29 11 **Q** What I'm hearing from you is that your system, HBC's  
03:22:32 12 system, that was mandated by these *Federal Regulations* was  
03:22:38 13 that the distribution center superintendent, the pickers in  
03:22:42 14 the distribution center, the corporate procurement officers,  
03:22:46 15 and the pharmacies knew what to look for and looked for it.

03:22:54 16 Is that your answer as to what HBC's system was from  
03:22:58 17 2009 until 2014?

03:23:00 18 **A** I'm telling you it was an integrated system where the  
03:23:03 19 stores were filling legitimate prescriptions which created  
03:23:08 20 demand to our warehouse that was fulfilled to those stores.

03:23:19 21 **Q** And if I'm being unclear, I'm trying to make sure I'm  
03:23:23 22 understanding your answer. But as far as the order --  
03:23:25 23 excuse me, as far as the system to detect any suspicious  
03:23:30 24 orders that come from the stores, what I'm hearing you say  
03:23:32 25 is that the system was that the superintendent, the pickers,

03:23:36 1 the procurement folks, and -- who would be the only ones  
03:23:42 2 with HBC, right, that we just talked about?

03:23:44 3 **A** HBC-specific, yes.

03:23:48 4 **Q** Okay. So the pickers, the superintendent, and the  
03:23:50 5 procurement folks knew what to look for and looked for it.

03:23:54 6 Is that the system that HBC operated to detect  
03:23:57 7 suspicious orders?

03:23:58 8 **A** The system also included the frontline scrutiny and  
03:24:03 9 professional judgment of the pharmacist filling  
03:24:06 10 prescriptions as well, together as one whole system, yes.

03:24:11 11 **Q** But otherwise, that's the system?

03:24:12 12 **A** That's the system. And then over time, the system was  
03:24:15 13 continually improved upon, which later added to thresholds  
03:24:21 14 and some IT enhancements, et cetera, yes.

03:24:24 15 **Q** But when the first hydrocodone pills started rolling  
03:24:27 16 out the door in November of 2009, the system was that the  
03:24:33 17 superintendent, the pickers, and the procurement officers  
03:24:36 18 knew what to look for and looked for it?

03:24:38 19 **A** As I stated, the system was an integrated system.  
03:24:41 20 Again, we're in a unique situation. We're distributing to  
03:24:44 21 our own stores. We know our stores. We know they're -- we  
03:24:49 22 have line of sight on every prescription that comes through  
03:24:52 23 our doors that we fill, and we fulfill orders to those  
03:24:56 24 stores.

03:24:56 25 And we have chain of custody of product all the way

03:25:00 1 from the warehouse to our stores, ultimately to the  
03:25:03 2 patients.

03:25:04 3 So what I'm telling you is our system was integrated  
03:25:07 4 between store controls, warehouse controls, and corporate  
03:25:10 5 controls.

03:25:16 6 **Q** You keep using the word "integrated." Tell me what  
03:25:20 7 you mean by that.

03:25:20 8 **A** It's an integrated system that if you think about it  
03:25:26 9 again, the stores are doing their due diligence, making sure  
03:25:29 10 they're filling legitimate prescriptions for legitimate  
03:25:32 11 needs, right, that generate orders to our warehouse, and we  
03:25:38 12 fulfill those orders.

03:25:39 13 So again, we have folks in the warehouse monitoring  
03:25:43 14 and having controls, physical controls, as well as the  
03:25:49 15 controls we discussed. You have the folks in the  
03:25:51 16 procurement side with their controls and the pieces that  
03:25:54 17 they're buying into the warehouse and selling out of the  
03:25:56 18 warehouse, as well as the folks in the store. So that is  
03:25:59 19 the system.

03:25:59 20 **Q** Did HBC provide any training to Mr. Durr or the  
03:26:05 21 pickers that worked underneath him as far as HBC's  
03:26:08 22 obligations under the Controlled Substances Act?

03:26:15 23 **A** That I don't know.

03:26:16 24 **Q** Did HBC provide any training or education to the  
03:26:19 25 procurement officers with corporate, I think you referred to



03:26:22 1 it as, on HBC's obligations under the Controlled Substances  
03:26:28 2 Act?

03:26:28 3 **A** I don't know.

03:26:28 4 **Q** Do you know whether or not there was any list -- we  
03:26:32 5 keep kind of saying that these different people in these  
03:26:36 6 different roles knew what to look out for.

03:26:39 7 Was there any list of those things that they should be  
03:26:42 8 looking out for?

03:26:43 9 **A** There's no list that I could find, but I think you  
03:26:45 10 established early on in the testimony that these drugs were  
03:26:48 11 commonly known as drugs of interest and certainly drugs that  
03:26:53 12 we needed to keep an eye on.

03:26:55 13 **Q** Okay. Okay. From the education that you did to  
03:26:59 14 prepare to testify here today, do you know of anything that  
03:27:04 15 Mr. Durr or Mr. Carlson or any of these pickers, do you know  
03:27:09 16 anything that they were looking for, any data points that  
03:27:11 17 they were looking at between '09 and 2014 to determine  
03:27:17 18 whether or not an order was suspicious?

03:27:20 19 **A** I didn't find any specific written documents of what  
03:27:23 20 they were looking for or not looking for.

03:27:25 21 **Q** Do you have any idea of what they would have been  
03:27:27 22 looking for?

03:27:28 23 **A** They would have been looking for any patterns that  
03:27:35 24 deviated from the norm. Certainly again, as I mentioned, we  
03:27:38 25 know our stores. We're selling product to our stores

03:27:43 1 pursuant to legitimate prescriptions. And they'd be looking  
03:27:47 2 for anything that's out of the norm.

03:27:50 3 **Q** How do you know that they were looking for anything  
03:27:52 4 out of the norm? How do you have that knowledge?

03:27:54 5 **A** Because as part of the diligence, looking at their  
03:27:58 6 responses and what they had discussed, that was clearly  
03:28:01 7 ascertained from the conversation.

03:28:06 8 **Q** Okay. So you understand that what Mr. Durr, the  
03:28:11 9 pickers, and the folks in corporate were looking for was any  
03:28:14 10 orders or any patterns that deviated from the norm?

03:28:21 11 **A** That were suspicious, that looked suspicious, yes.

03:28:23 12 **Q** What information -- let me back up. I'm going to ask  
03:28:28 13 you some questions about the pickers in particular.

03:28:30 14 Is their sole job function to receive orders and pick  
03:28:40 15 the orders, and fill the totes and load the trucks? Is that  
03:28:44 16 their sole -- is that their primary function?

03:28:48 17 **A** Primary functions, yes.

03:28:50 18 **Q** Okay. And would it be fair to say that they spend  
03:28:54 19 most of their day in a warehouse receiving orders, locating  
03:28:58 20 product, putting it into a tote, and facilitating it getting  
03:29:00 21 on a truck so it can go out to a store?

03:29:03 22 **A** And maintaining the security of that product along the  
03:29:05 23 way, yes.

03:29:06 24 **Q** Okay. What information, reports, data is available to  
03:29:16 25 those pickers to allow them to identify patterns that

03:29:19 1 deviate from the norm?

03:29:21 2 **A** I did not find any particular reports or any specific  
03:29:29 3 things that they were looking for.

03:29:32 4 **Q** Okay. With Mr. Durr, the superintendent, can you kind  
03:29:38 5 of generally describe for me what his job duties were on a  
03:29:43 6 daily basis?

03:29:45 7 **A** His responsibilities would be the security and  
03:29:48 8 controls of running our pharmacy warehouse.

03:29:54 9 **Q** Okay. And that pharmacy warehouse included not only  
03:29:56 10 the Schedule III hydrocodone combination products that we've  
03:30:01 11 been talking about today, but it also included a variety of  
03:30:04 12 other prescription medication, correct?

03:30:08 13 **A** Nonscheduled, is that what you're asking?

03:30:12 14 **Q** Sure.

03:30:13 15 **A** Yes.

03:30:14 16 **Q** Okay. It also included Schedule IVs and Vs, correct?

03:30:18 17 **A** Correct.

03:30:19 18 **Q** It also included Schedule IIIs that are not  
03:30:23 19 hydrocodone combination products, correct?

03:30:23 20 **A** Yes.

03:30:24 21 **Q** It also included, I think as you just said,  
03:30:26 22 noncontrolled substances such as, you know, blood pressure  
03:30:28 23 medicine, acne medication, birth control; all those types of  
03:30:32 24 things would be included, correct?

03:30:33 25 **A** Yes.

03:30:33 1 Q And all of those things are under the purview of  
03:30:36 2 Mr. Durr, correct?

03:30:36 3 A Yes.

03:30:37 4 Q Okay. Are you aware of any data, reports, or  
03:30:42 5 information that Mr. Durr had available to him to assist him  
03:30:45 6 in identifying any patterns of Schedule III drug orders,  
03:30:55 7 specifically HCPs, that would have deviated from the norm?

03:30:59 8 A Through this process I did not find any -- you keep  
03:31:02 9 asking me "reports." I did not find any reports that he'd  
03:31:05 10 be looking at.

03:31:06 11 But, again, as part of this integrated process, he  
03:31:09 12 would be working with our operations folks. The operations  
03:31:15 13 folks oversee the stores. So it's a closed system, so  
03:31:18 14 there's a negative feedback loop within that system.

03:31:20 15 Q And when you got information from Mr. Durr, he didn't  
03:31:23 16 say, I had this report to review or I had this data set that  
03:31:27 17 I got sent to me on a regular basis. He didn't say anything  
03:31:31 18 like that?

03:31:31 19 A I didn't read any of that, no.

03:31:32 20 Q There was no paper identified, no report, no Excel  
03:31:37 21 spreadsheet, no -- nothing like that that was identified by  
03:31:41 22 Mr. Carlson, Mr. Durr, or any information you received from  
03:31:45 23 the pickers, no documents that were identified that were  
03:31:48 24 reviewed to assist in this process, correct?

03:31:53 25 A Specifically, again, our system continued to be

03:31:59 1 improved and changed over time. And there were certainly  
03:32:06 2 procedures that were buttressed and improved over time.

03:32:14 3 But certainly through what I read, there was nothing  
03:32:17 4 on a report or, to your point, an Excel spreadsheet that I  
03:32:20 5 could glean.

03:32:22 6 **Q** Okay.

03:32:22 7 **A** It doesn't mean there wasn't any. I just -- it wasn't  
03:32:28 8 in what I had read.

03:32:29 9 **Q** And you spent 40 to 50 hours preparing for today,  
03:32:33 10 correct?

03:32:34 11 **A** Yes, sir.

03:32:35 12 **Q** Okay. And you made every effort to get all the  
03:32:38 13 information that you could, correct?

03:32:40 14 **A** Yes.

03:32:41 15 **Q** Okay. You mentioned that the system had improvements  
03:32:49 16 over time.

03:32:50 17 **A** Yes.

03:32:51 18 **Q** I think you said that at some point in time there was  
03:32:54 19 a threshold program implemented?

03:32:57 20 **A** Yes.

03:32:58 21 **Q** Okay. When did HBC first start utilizing a threshold  
03:33:01 22 program?

03:33:02 23 **A** A threshold program with some IT enhancements were put  
03:33:06 24 into place roughly in 2013.

03:33:11 25 **Q** Okay. Do you know what month in 2013, or season even?

03:33:15 1 **A** I don't recall exactly in 2013.

03:33:32 2 **Q** And were thresholds set for every prescription drug or  
03:33:36 3 just controlled substances?

03:33:38 4 **A** Controlled substances.

03:33:41 5 **Q** And that included Schedule III controlled substances?

03:33:44 6 **A** Yes.

03:33:44 7 **Q** How were thresholds established?

03:33:50 8 Let me back up before you answer that. I'm making an  
03:33:54 9 assumption that threshold is a monthly ordering threshold.

03:33:57 10 Am I wrong on that?

03:34:01 11 **A** So the threshold established was using diligence that  
03:34:07 12 was ascertained at the time from DEA that a 3X threshold to  
03:34:14 13 be established, monthly threshold, to your point, using 12  
03:34:18 14 months of trailing data, 3X the average for that month.

03:34:27 15 **Q** Let me say it back to you to make sure I understand  
03:34:29 16 it.

03:34:29 17 This threshold program which was first begun in 2013  
03:34:32 18 set a threshold at three times the average amount of that  
03:34:44 19 substance that was distributed over the last 12 months?

03:34:48 20 **A** So 3X the company average for that chemical. So it  
03:34:53 21 was at the GPI level. So the chemical would include all the  
03:34:56 22 drugs having that chemical in it. So 3X, using 12 months of  
03:35:02 23 trailing data, 3X the company average for that chemical,  
03:35:06 24 that product.

03:35:08 25 **Q** Okay. So you explained two things there. First of

03:35:11 1 all, it was based on the chemical. Is what the threshold --

03:35:15 2 **A** GPI level, yes.

03:35:16 3 **Q** Okay. So does that mean that Lortab and Vicodin don't  
03:35:19 4 get different thresholds, they're all under the same  
03:35:23 5 threshold?

03:35:23 6 **A** It's all lumped together as one threshold, yes.

03:35:26 7 **Q** Because that's the same combination of hydrocodone and  
03:35:29 8 acetaminophen?

03:35:29 9 **A** It's looking at the active ingredient, yes.

03:35:31 10 **Q** Okay. And then the -- as far as how the threshold is  
03:35:37 11 set, if we had -- if HBC had sold a hundred HCP products  
03:35:46 12 over a month for the last 12 months, the threshold for the  
03:35:50 13 next month would have been 300; is that fair?

03:35:54 14 **A** Well, the threshold was the -- yes. Let me just play  
03:36:07 15 that back.

03:36:07 16 So it would be 3X, again, at the GPI level of that GPI  
03:36:14 17 using the 12 months worth of data, yes.

03:36:16 18 **Q** I think I heard you mention that HBC received guidance  
03:36:19 19 from the DEA that a three time average was an appropriate  
03:36:25 20 threshold.

03:36:26 21 **A** What I said is during the due diligence to set the  
03:36:29 22 threshold, information was derived from the DEA published  
03:36:35 23 websites on a 3X threshold that they used for list  
03:36:41 24 chemicals, and that's where our 3X number was derived from.

03:36:46 25 **Q** But for opioids. That's my question.

03:36:48 1 Are you testifying that HBC had information from the  
03:36:51 2 DEA that they were approving or ratifying or blessing,  
03:36:56 3 whatever verb you want to use, a 3X threshold in 2013 for  
03:37:05 4 opioids?

03:37:05 5 **A** No. That is not what I'm saying.

03:37:07 6 **Q** The DEA never told HBC that a three times average was  
03:37:10 7 appropriate, correct?

03:37:12 8 **A** Directly, no. Never.

03:37:14 9 **Q** Did DEA ever indirectly tell HBC that a three times  
03:37:18 10 average was appropriate?

03:37:18 11 **A** What I'm saying is the HBC set its threshold based on  
03:37:23 12 information that it gleaned from a DEA -- just like you  
03:37:30 13 showed me earlier, a page from the DEA website. There was  
03:37:37 14 information that they used from DEA and inferred to use a 3X  
03:37:43 15 threshold.

03:37:44 16 **Q** Okay.

03:37:44 17 **A** HBC set the threshold, but it wasn't just some  
03:37:47 18 arbitrary number they picked. There was information they  
03:37:50 19 used to get to a 3X threshold.

03:37:52 20 **Q** I'll show you what I'll mark as Number 13.

03:38:01 21 Showing you a June 12, 2012, letter from Joe  
03:38:10 22 Rannazzisi with the DEA.

03:38:13 23 Do you see that?

03:38:15 24 **A** Yes.

03:38:16 25 **Q** Have you ever seen this before?



03:38:17 1 **A** Yes.

03:38:18 2 **Q** Did you have the opportunity to review this document  
03:38:23 3 in preparing for your deposition today?

03:38:24 4 **A** Not all of it.

03:38:26 5 **Q** Okay. And I'll represent to you, and you can flip  
03:38:30 6 through it, and we'll look through some of this, but it's a  
03:38:33 7 2012 letter. And attached to that letter were earlier  
03:38:36 8 letters, two from 2007 and one from 2006.

03:38:41 9 Do you see that?

03:38:42 10 **A** Yes.

03:38:50 11 **Q** This one in 2012 was before HBC instituted its  
03:38:54 12 threshold policy at three times average, correct?

03:38:56 13 **A** Yes.

03:38:56 14 **Q** And it says -- the first line says, "This letter is  
03:39:02 15 being sent to every entity in the United States who is  
03:39:04 16 registered with the Drug Enforcement Administration to  
03:39:10 17 manufacture or distribute controlled substances."

03:39:11 18 Do you see that?

03:39:12 19 **A** Yes.

03:39:12 20 **Q** In June 2012, was HBC such a registrant?

03:39:19 21 **A** Yes.

03:39:21 22 **Q** "This letter is to remind controlled substance  
03:39:24 23 manufacturers and distributors of their responsibility to  
03:39:26 24 inform the DEA of suspicious orders in accordance with 21  
03:39:30 25 CFR 1301.74(b)."

03:39:35 1 Do you see that?

03:39:36 2 **A** Yes.

03:39:36 3 **Q** And the very next paragraph it says, "On September 27,  
03:39:39 4 2006, DEA sent a letter to its registrant community  
03:39:43 5 expressing concerns regarding drug abuse in the United  
03:39:45 6 States and highlighting the responsibility of manufacturers  
03:39:47 7 and distributors to be vigilant in the distribution of  
03:39:50 8 controlled substances."

03:39:51 9 Do you see that?

03:39:52 10 **A** Yes.

03:39:52 11 **Q** Well, it says it was sent to every entity who was  
03:39:56 12 registered with the DEA, and you agreed to distribute  
03:39:59 13 controlled substances, and you agree that HBC was registered  
03:40:01 14 with the DEA to distribute controlled substances in June  
03:40:04 15 2012, correct?

03:40:05 16 **A** Correct.

03:40:05 17 **Q** Okay. It says, "Although DEA's September 2006 letter  
03:40:09 18 included a list of factors that might indicate diversion,  
03:40:12 19 DEA wants to stress this was not a comprehensive list of all  
03:40:15 20 possible indications of diversion. DEA encourages the  
03:40:18 21 registrants to take an integrated approach. This point was  
03:40:20 22 emphasized in the December 2007 letter, and DEA is once  
03:40:24 23 again bringing it to your attention."

03:40:25 24 Do you see that?

03:40:26 25 **A** Yes.

03:40:26 1 Q It goes on in the next paragraph to talk about the  
03:40:32 2 Code and the Regulation that we looked at earlier today. It  
03:40:36 3 says, "Under federal law, all manufacturers and distributors  
03:40:39 4 are required to maintain effective controls against  
03:40:42 5 diversion."

03:40:42 6 Do you see that?

03:40:43 7 A Yes.

03:40:43 8 Q It says, "The DEA regulations require all  
03:40:46 9 manufacturers and distributors to report suspicious orders  
03:40:48 10 of controlled substances."

03:40:50 11 Do you see that?

03:40:51 12 A Yes.

03:40:51 13 Q And it says, "The registrant shall design and operate  
03:40:54 14 a system to disclose to the registrant suspicious orders of  
03:40:58 15 controlled substances. This regulation clearly places the  
03:41:01 16 responsibility on the registrant to design and operate the  
03:41:04 17 system."

03:41:04 18 Do you see that?

03:41:05 19 A Yes.

03:41:05 20 Q Okay. And was HBC aware of that obligation going back  
03:41:10 21 to 2009 when they first started distributing hydrocodone  
03:41:17 22 combination products?

03:41:17 23 A Yes.

03:41:17 24 Q If you go down to the bottom paragraph, see where it  
03:41:30 25 says, "Registrants who rely on rigid formulas to identify

03:41:34 1 whether an order is suspicious may fail to detect suspicious  
03:41:37 2 orders."

03:41:37 3 Do you see that?

03:41:38 4 **A** Yes.

03:41:38 5 **Q** It says, "For example, this system might not identify  
03:41:41 6 suspicious orders being placed by a pharmacy if that  
03:41:45 7 pharmacy placed unusually large orders from the beginning  
03:41:48 8 with its relationship with the supplier."

03:41:51 9 Do you see that?

03:41:52 10 **A** Yes.

03:41:52 11 **Q** Would you agree with me that HBC's threshold program  
03:41:54 12 that was instituted in 2013 was a rigid formula?

03:41:59 13 **A** No, I do not.

03:42:04 14 **Q** Why not?

03:42:04 15 **A** Because in our situation, as I testified earlier, we  
03:42:07 16 have line of sight on our stores, warehouse, everything  
03:42:12 17 involved. So this is one component.

03:42:15 18 The threshold formula was one component of a total  
03:42:18 19 system to identify and detect suspicious orders.

03:42:22 20 **Q** So let me get back to the threshold report.

03:42:25 21 So those are established sometime in 2013, correct?

03:42:28 22 **A** Correct.

03:42:29 23 **Q** Okay. How often would a report kind of updating HBC  
03:42:37 24 on those thresholds be generated?

03:42:41 25 **A** So a report would generate daily. That would be

03:42:49 1 reviewed daily.

03:42:50 2 Q Okay. So the first of the month would be first report  
03:42:59 3 for that month, correct?

03:43:03 4 A Yes.

03:43:07 5 Q Okay. And on the first of the month, describe for me  
03:43:12 6 what that report is going to look at. Is it going to be a  
03:43:15 7 list of every pharmacy and every controlled drug and how  
03:43:21 8 many orders have been made, or is it only going to identify  
03:43:25 9 orders that are approaching or over the threshold?

03:43:30 10 A The daily report would identify orders of interest  
03:43:35 11 that we would like to investigate further.

03:43:37 12 Q And so you said that the threshold report would  
03:43:40 13 identify I think what you called orders of interest,  
03:43:44 14 correct?

03:43:45 15 A Correct.

03:43:45 16 Q Okay. Is there any written policy and procedure  
03:43:52 17 anywhere at any time that Giant Eagle has or had, HBC has or  
03:43:59 18 had, that uses the term "order of interest"?

03:44:02 19 A Can you define "at any time"? What's the time frame  
03:44:10 20 that you're describing?

03:44:12 21 Q From 2006 until today.

03:44:13 22 A Do we have a document or a report, is that right?

03:44:20 23 Q Do you have a document, a policy, a procedure,  
03:44:24 24 anything that uses the term "order of interest"?

03:44:27 25 A So I'm trying to -- I don't know.

03:44:38 1 Q I want to make sure I'm not missing a policy or a  
03:44:42 2 procedure or a definitions page or an appendix that would  
03:44:47 3 tell me what "order of interest" means to HBC or Giant  
03:44:50 4 Eagle.

03:44:51 5 Am I or am I not missing something?

03:44:54 6 A No, you're not missing. There's reports and things  
03:44:56 7 that the misnomer of things that are classified as  
03:44:59 8 suspicious, our orders are not classified as suspicious  
03:45:02 9 until after an investigation happens.

03:45:04 10 So certainly our reports in its infancy when they were  
03:45:08 11 created mention suspicious report, suspicious order. That's  
03:45:12 12 not what it means that those reports -- the fact that  
03:45:16 13 something shows up on that report does not mean it's  
03:45:19 14 suspicious until we've cleared it or not. And if not, we  
03:45:24 15 would report it.

03:45:25 16 Q Okay. When did that phrase "orders of interest" come  
03:45:32 17 about within HBC or Giant Eagle?

03:45:34 18 A I think looking at things through the 2018 lens versus  
03:45:43 19 things that happened in the past, at some point along the  
03:45:46 20 way there was an inference of the way these reports were  
03:45:53 21 labeled or even internal communications were labeled were  
03:45:57 22 not what they intended.

03:45:58 23 So our team started using "orders of interest" later.  
03:46:03 24 The exact time, I can't tell you, but --

03:46:08 25 Q That would be more recent?

03:46:09 1 **A** More recent, yes.

03:46:10 2 **Q** Okay. It would be accurate to say that -- let me back  
03:46:13 3 up. Let's get back to these threshold reports.

03:46:16 4 So you said that they're generated daily. Are they --  
03:46:22 5 when they're generated, do they contain information for any  
03:46:26 6 Giant Eagle pharmacy?

03:46:27 7 **A** All pharmacies, yes.

03:46:30 8 **Q** Was the threshold set store by store or was it  
03:46:38 9 chain-wide?

03:46:38 10 **A** Initially, it was set as the chain average, and then  
03:46:41 11 later on it was improved on, per store improved just based  
03:46:45 12 on continuing -- through this process we continued to look  
03:46:49 13 at better ways of looking at things, et cetera. It was  
03:46:53 14 improved to look at each store's individual -- store by  
03:46:59 15 store.

03:46:59 16 **Q** When did that change happen?

03:47:01 17 **A** 2017.

03:47:06 18 **Q** Okay. So from 2013 through 2017, it was a chain-wide  
03:47:15 19 Giant Eagle-wide threshold average?

03:47:21 20 **A** Looking at our stores in totality as a chain and then  
03:47:24 21 applying that threshold, the chain average to each location,  
03:47:27 22 yes.

03:47:27 23 **Q** So whether the Giant Eagle location was in downtown  
03:47:32 24 Cleveland or a more rural location in Summit County, those  
03:47:37 25 two pharmacies would have the exact same threshold for a

03:47:41 1 particular product?

03:47:49 2 **A** Yes.

03:47:50 3 And as I mentioned, the threshold was one component of  
03:47:52 4 the total system that we used, but yes.

03:47:54 5 **Q** Okay. Were these orders that showed up on the  
03:47:59 6 threshold report, did they show up before or after the order  
03:48:03 7 had been shipped to the pharmacy?

03:48:30 8 **A** It would have been -- I believe it would have been  
03:48:33 9 either in process of shipping or having been shipped.

03:48:35 10 **Q** I'm on number 14.

03:48:42 11 I'm going to show you HBC 1032 which we're going to  
03:48:46 12 mark as Exhibit Number 14 for today's deposition.

03:48:49 13 Is this an example of one of the threshold reports  
03:48:52 14 that we've been talking about?

03:49:15 15 **A** In this format, I'm having trouble figuring out what  
03:49:22 16 this is.

03:49:23 17 **Q** I'm giving it to you how it was given to me, so --

03:49:28 18 **A** Okay.

03:49:28 19 **Q** I was hoping you could kind of explain some of it to  
03:49:32 20 me, but --

03:49:37 21 Do you recognize this as being one of the threshold  
03:49:39 22 reports that we've been talking about?

03:49:40 23 **A** I'm just having difficulty just trying to understand  
03:49:43 24 what I'm looking at.

03:49:45 25 **Q** Okay. Let's see if we can walk through it a little



03:49:47 1 bit.

03:49:48 2 It looks like it was maybe a spreadsheet. It looks  
03:49:51 3 like the left-hand column is the pharmacy number?

03:49:54 4 **A** Yes.

03:49:55 5 **Q** Do you see that?

03:49:56 6 And those numbers going down underneath there, do  
03:50:01 7 those correspond with different Giant Eagle stores?

03:50:03 8 **A** It appears so, yes.

03:50:05 9 **Q** Okay. And I want to skip the vendor for a minute.  
03:50:08 10 But the next one indicates month key, and it looks like  
03:50:11 11 October of 2016 is the date of this report?

03:50:14 12 **A** Yes.

03:50:15 13 **Q** I couldn't see any way from this report to determine  
03:50:19 14 when in October this report was run, whether it was run on  
03:50:22 15 the 1st or the 15th or the 31st.

03:50:26 16 Do you know if there's a way to determine that?

03:50:30 17 **A** Based on what I'm looking at, I agree, I can't tell.

03:50:33 18 **Q** Okay. The next column says, I guess it's GPI 10?

03:50:36 19 **A** Yes.

03:50:37 20 **Q** Can you explain what that is?

03:50:39 21 **A** Sure. The GPI is the GPI class of the drug. I don't  
03:50:45 22 know which GPI -- well, actually, this one, based on what  
03:50:50 23 I'm reading here, I'm assuming this is oxycodone, GPI -- the  
03:50:53 24 GPI 10 for oxycodone.

03:50:55 25 **Q** Okay. And you were just talking about the top one on

03:50:58 1 the list?

03:50:58 2 **A** Yes.

03:50:59 3 **Q** Okay. And the next column says the -- looks like the  
03:51:03 4 total shipped quantity.

03:51:04 5 Do you see that?

03:51:05 6 **A** Yes.

03:51:05 7 **Q** Okay. And it lists the total shipped quantity as  
03:51:10 8 4500. And the next column says the threshold quantity.

03:51:14 9 Do you see that?

03:51:14 10 **A** Yes.

03:51:15 11 **Q** Okay. And the threshold was 4200, so less than the  
03:51:23 12 4500, correct?

03:51:23 13 **A** From what I'm reading, yes.

03:51:28 14 **Q** Okay. And then in the next column it has the product  
03:51:32 15 name?

03:51:33 16 **A** Yes.

03:51:33 17 **Q** Okay. And then, finally, the column on the right is  
03:51:38 18 the schedule number, and oxycodone obviously is a Schedule  
03:51:42 19 II drug, correct?

03:51:43 20 **A** Yes.

03:51:44 21 **Q** Okay. Is there -- are you expecting there to be any  
03:51:47 22 additional information on one of these threshold reports?

03:51:51 23 **A** Again, I haven't seen this in this format, so -- I'm  
03:51:59 24 sorry, I just really don't know what I'm looking at here. I  
03:52:01 25 know that on the report that the team would generate, it

03:52:06 1 looked different than this output. I'm just -- I read the  
03:52:12 2 columns with you here, but I just don't know.

03:52:15 3 **Q** But there's -- if you were to go back to your office  
03:52:17 4 and ask to see the threshold report for October of 2016, do  
03:52:23 5 you think that that report would have any additional  
03:52:25 6 information than what I have right here in front of me?

03:52:27 7 **A** I don't believe so.

03:52:28 8 **Q** Okay. A couple questions about this.

03:52:33 9 Number one, you see the column, one, two, three,  
03:52:39 10 fourth column over is total shipped quantity, correct?

03:52:43 11 **A** Yes.

03:52:43 12 **Q** Okay. So you agree are that even though the quantity  
03:52:47 13 that was ordered exceeded the threshold just for that first  
03:52:49 14 one, 4500 is over the 4200 threshold, that that quantity was  
03:52:53 15 shipped to the store?

03:52:56 16 **A** Again, I'm just going by what's on this page. I don't  
03:53:01 17 know whether it was shipped or not. I'm reading it like  
03:53:03 18 you.

03:53:04 19 **Q** Okay. And it says it was shipped?

03:53:06 20 **A** I'm reading that it says -- the title is ETL Shipped  
03:53:10 21 Quantity, and it says 4500.

03:53:13 22 **Q** Okay. And we know that this threshold -- first off,  
03:53:16 23 we can look down and we see the first seven or so entries  
03:53:19 24 are all for the same product, correct?

03:53:25 25 **A** Correct.

03:53:26 1 Q Okay. And if we go to the far left-hand column, we  
03:53:29 2 see that that's for seven or eight different Giant Eagle  
03:53:32 3 stores, correct?

03:53:33 4 A Yes.

03:53:34 5 Q And we know that that threshold that was set here in  
03:53:38 6 2016, again, the threshold was identical for all these  
03:53:42 7 different pharmacies regardless of where that pharmacy was  
03:53:45 8 located, what that pharmacy's average sales were, what their  
03:53:52 9 customer traffic were; the threshold was the same for all of  
03:53:58 10 them, correct?

03:53:58 11 A We went through how the threshold was set earlier,  
03:54:01 12 yes. And then looking at this report, a lot of the same  
03:54:04 13 numbers are in that column.

03:54:07 14 Q Okay. Well, okay. Well, just looking at the first  
03:54:11 15 drug, the Oxaydo, the threshold for every pharmacy is  
03:54:18 16 4213.83, correct?

03:54:19 17 A I'm sorry. Where are you at?

03:54:20 18 Q The first seven entries, the threshold --

03:54:22 19 A Oh, 4213?

03:54:24 20 Q Yes.

03:54:24 21 A Yeah 4213.83.

03:54:27 22 Q So even in October of 2016, the thresholds were  
03:54:30 23 uniform across the entire chain of Giant Eagle pharmacies?

03:54:33 24 A Yes.

03:54:39 25 It appears to be, based on what I'm reading here.

03:54:42 1 Q So then what we're seeing for the rest of this page  
03:54:45 2 here, for the entire second page, and then for the first  
03:54:50 3 third of the third page, are incidences where orders from  
03:55:00 4 Giant Eagle pharmacies for Co-Gesic, which I'm going to  
03:55:09 5 represent to you is a hydrocodone combination product, are  
03:55:12 6 exceeding the threshold, which is three times the monthly  
03:55:17 7 average for the last year.

03:55:18 8 Do you see that?

03:55:25 9 A I'm seeing what's on this page. As far as what their  
03:55:28 10 exact thresholds are, again, it's listed as that on the top  
03:55:32 11 of the page, but -- it would appear as such, but without  
03:55:39 12 being able to validate what I'm looking at or how I'm  
03:55:42 13 looking at this, I can't answer with certainty.

03:55:44 14 Q Okay. Well, according to what HBC has provided us in  
03:55:51 15 this litigation, the threshold for this hydrocodone  
03:55:54 16 combination product in October of 2010 was -- let's just  
03:56:00 17 round up and say 5000.

03:56:01 18 A I'm sorry, where are you?

03:56:02 19 Q I'm on the threshold for the Co-Gesic.

03:56:06 20 A Which page?

03:56:07 21 Q You can look at any of them. It's on every single  
03:56:10 22 one.

03:56:10 23 A Got it.

03:56:11 24 Q So to make the numbers easier, if we round up, the  
03:56:14 25 threshold was about 5000, correct?

03:56:16 1 **A** Yes.

03:56:17 2 **Q** The threshold is the monthly average times three,  
03:56:20 3 correct?

03:56:21 4 **A** Chain average times three, yes.

03:56:23 5 **Q** Okay. So if we did 5000 divided by three, we get  
03:56:29 6 approximately 1700.

03:56:32 7 Do you agree with that, roughly?

03:56:34 8 **A** Yes.

03:56:35 9 **Q** Okay. So the monthly average for the last year for  
03:56:39 10 this hydrocodone combination product was approximately 1700,  
03:56:43 11 correct?

03:56:44 12 **A** The way you describe it, yes.

03:56:48 13 **Q** I'm asking if you can tell me about how many different  
03:56:51 14 stores we're seeing here who are over their threshold for  
03:56:56 15 hydrocodone combination product. I think I counted 37 on  
03:57:00 16 the first page. Then we have the entire second page, and  
03:57:04 17 then about half of the third page. Correct?

03:57:08 18 **A** Yes.

03:57:09 19 **Q** So roughly 80, 90, 100 stores; do you agree with that?

03:57:17 20 **A** Yes.

03:57:20 21 **Q** Well, let's just keep looking at this, and I'll just  
03:57:22 22 ask you a couple questions. And we'll go on the assumptions  
03:57:25 23 that this report is what it should be, which is what you  
03:57:30 24 testified to, that the threshold is three times the monthly  
03:57:34 25 average. Okay?

03:57:36 1 **A** Yes.

03:57:36 2 **Q** So if you look at the first page, oh, about 10 or 12  
03:57:42 3 down in the Co-Gesic list, you see where there's a quantity  
03:57:52 4 shipped of 18,500.

03:57:55 5 Do you see that? I think it was for store 60?

03:57:59 6 **A** Yes.

03:58:00 7 **Q** Okay. So we know that there's more than three times  
03:58:06 8 over the threshold, correct?

03:58:07 9 **A** It's three times the 4895 listed there, yes.

03:58:10 10 **Q** How many pharmacies in the entire chain?

03:58:12 11 **A** Over 200.

03:58:13 12 **Q** Okay. And what we also determined is that  
03:58:16 13 approximately 80 to 100 pharmacies are listed on this  
03:58:24 14 threshold report as exceeding that threshold in October of  
03:58:26 15 2016, correct?

03:58:33 16 **A** On this report, yes.

03:58:34 17 **Q** And some of them, if we look at about the middle of  
03:58:39 18 the screen there, you see there's I think Store 60, the  
03:58:43 19 total shipped quantity in October of 2016 is 18,500.

03:58:47 20 Do you see that, 18,500?

03:58:53 21 **A** Yes.

03:58:54 22 **Q** Okay. And I think we agreed that that's more than  
03:58:57 23 three times over the threshold, correct?

03:58:59 24 **A** For the chain, yes.

03:59:00 25 **Q** Okay. But that would also be over 10 times higher

03:59:04 1 than the monthly average for the last 12 months, correct?

03:59:12 2 **A** I'm sorry, say that again, please.

03:59:14 3 **Q** Sure. We identified that the monthly average for the  
03:59:16 4 last 12 months would have been 1700, right?

03:59:20 5 **A** Correct.

03:59:20 6 **Q** So this 18,500 that this particular pharmacy received  
03:59:24 7 during October of 2016 is over 10 times the monthly average  
03:59:28 8 for the chain for the past 12 months, correct?

03:59:32 9 **A** That is correct, but that is one of our busiest  
03:59:34 10 stores. So this -- the chain average takes our busiest  
03:59:38 11 stores and our slow stores, our less volume stores, and puts  
03:59:41 12 it together in an average. So stores on this list will be  
03:59:46 13 definitely over the average based on volume.

03:59:51 14 **Q** Okay. Because when HBC or Giant Eagle sets their  
03:59:55 15 thresholds, they do it chain-wide, they don't take into  
03:59:58 16 account differences between stores, correct?

04:00:00 17 **A** For this report at this particular time, yes.

04:00:04 18 **Q** Okay. And if we go two entries down for it looks like  
04:00:08 19 Store 71, we similarly see that that store is over 10 times  
04:00:13 20 the monthly average for the last 12 months.

04:00:18 21 Do you see that?

04:00:18 22 **A** Yes.

04:00:19 23 **Q** Okay. And if we go down about 15 or so entries, we  
04:00:25 24 see I believe it's Store 1405, which had 21,500 units  
04:00:31 25 shipped to it in October of 2016.



04:00:34 1 Do you see that?

04:00:40 2 **A** Yes.

04:00:40 3 **Q** And you agree that this is more than four times --  
04:00:45 4 excuse me -- this would be more than four times over the  
04:00:49 5 threshold, correct?

04:00:50 6 **A** The chain-wide threshold, yes.

04:00:54 7 **Q** Okay. And again, more than 10 times over the monthly  
04:00:59 8 store average for the last 12 months?

04:01:04 9 **A** For the chain, yes.

04:01:06 10 **Q** Okay. And I'm not going to go through every single  
04:01:12 11 one of them, but if you flip through the next page, you see  
04:01:15 12 several additional stores that are more than two times,  
04:01:21 13 several that are more than three times the threshold that  
04:01:24 14 Giant Eagle and/or HBC had set for this particular  
04:01:29 15 hydrocodone combination product.

04:01:33 16 **A** Correct.

04:01:33 17 **Q** Was there any type of policy in place about what would  
04:01:37 18 happen with anything that popped on this report?

04:01:43 19 **A** There was an expectation the procedure -- and just for  
04:01:48 20 matter of context, do you know the date of this report?

04:01:51 21 **Q** What date it was generated?

04:01:53 22 **A** Yes.

04:01:54 23 **Q** I believe I saw a cover sheet during the break that  
04:02:01 24 said it was the October 31 of '16.

04:02:07 25 **A** Okay, thank you.

04:02:09 1 So the expectation on the procedure would be any store  
04:02:12 2 that shows up on this report, an investigation would be  
04:02:16 3 conducted.

04:02:17 4 **Q** Okay. Would it be fair to characterize this report as  
04:02:21 5 a tool that was utilized by Giant Eagle or HBC to  
04:02:26 6 investigate potential suspicious orders?

04:02:32 7 **A** One tool, but yes.

04:02:35 8 **Q** And what was -- you said there was an expectation that  
04:02:40 9 there would be an investigation, correct?

04:02:42 10 **A** Yes.

04:02:42 11 **Q** Is there an expectation that there would be an  
04:02:45 12 investigation into every single one of these controlled  
04:02:49 13 substances where the drugs that have already been shipped  
04:02:56 14 exceeded the threshold?

04:02:57 15 **A** Yes. However, some of them -- you just mentioned this  
04:03:00 16 report was dated the 31st, so it compounds. Each day  
04:03:04 17 compounds from the month. So if they have already cleared a  
04:03:06 18 store earlier in the month for whatever reason, then they  
04:03:09 19 wouldn't reinvestigate it. But every line item would be  
04:03:12 20 investigated and cleared.

04:03:13 21 **Q** Was it always the Procurement department who was in  
04:03:16 22 charge of investigating these?

04:03:19 23 **A** The Procurement department in conjunction with the  
04:03:21 24 Compliance department.

04:03:22 25 **Q** Okay. And where does Loss Prevention fall in here?

04:03:28 1 Is Loss Prevention within either of those departments?

04:03:30 2 **A** Well, they're a stakeholder, so certainly it's the  
04:03:36 3 Procurement department, the Compliance department, and then  
04:03:37 4 the Loss Prevention department's included in that. So if we  
04:03:41 5 need to send them out for an investigation, we need them to  
04:03:44 6 go retrieve a product, they're certainly a stakeholder, yes.

04:03:47 7 **Q** Essentially, what I'm trying to figure out is whether  
04:03:50 8 or not HBC or Giant Eagle maintains any type of due  
04:03:53 9 diligence files.

04:03:53 10 So, for example, this order for Store 71 for this  
04:03:59 11 controlled II substance pops on this report. If you wanted  
04:04:02 12 to go back now two years after the fact and see what did we  
04:04:06 13 do to justify and clear that order, is that possible?

04:04:10 14 **A** I don't know.

04:04:13 15 **Q** When did Giant Eagle or HBC put in place a system that  
04:04:18 16 required employees to log or maintain files that explained  
04:04:25 17 why particular orders were cleared or not cleared?

04:04:29 18 **A** I can say from the diligence I had in early 2017, a  
04:04:36 19 system was developed where investigative notes and  
04:04:40 20 information could be entered regarding orders that we wanted  
04:04:44 21 to look at, orders of interest.

04:04:46 22 **Q** Prior to early 2017, HBC nor Giant Eagle had any  
04:04:52 23 system that was dedicated to maintain notes, reports, or  
04:04:59 24 memos that would explain or justify why particular orders  
04:05:02 25 were cleared or not cleared?

04:05:04 1 **A** We didn't have a repository, if that's what you're  
04:05:07 2 asking. There were certainly definitive e-mails to the  
04:05:10 3 field, e-mails to the warehouse, things of sorts that  
04:05:15 4 clearly show a diligence of trying to run the ground on why  
04:05:22 5 an order happened or what triggered, sure.

04:05:27 6 **Q** Can you say that that's the case for every order that  
04:05:31 7 popped on one of these reports?

04:05:34 8 **A** I can say after reviewing and talking to associates  
04:05:36 9 involved and folks that do report to me, that every order  
04:05:41 10 that pops up of interest is investigated --

04:05:48 11 **Q** Okay. But you can't --

04:05:50 12 **A** -- and either -- I'm sorry.

04:05:52 13 **Q** Go ahead.

04:05:52 14 **A** -- and either cleared or not.

04:05:53 15 **Q** But you can't tell me as you sit here today whether or  
04:05:56 16 not there's any documentation to prove or disprove whether  
04:06:01 17 or not any and all of those investigations actually  
04:06:03 18 happened?

04:06:04 19 **A** I can tell you that I don't know that -- I don't know  
04:06:06 20 that I have specific for each line item on -- well, from  
04:06:12 21 2017 on, I can tell you we have a repository that was built.  
04:06:18 22 Prior to that, I cannot.

04:06:19 23 **Q** Okay. That's probably the easiest way to do this.

04:06:21 24 Prior to early 2017, Giant Eagle nor HBC had any  
04:06:25 25 repository or location, whether it's physical or digital, to

04:06:31 1 maintain any type of due diligence reports or efforts,  
04:06:39 2 correct?

04:06:39 3 **A** There's no central repository. Certainly if there was  
04:06:43 4 folders or e-mails or things that were kept -- I've seen  
04:06:50 5 some of them, so definitely I know they exist.

04:06:52 6 **Q** Can you tell me, between -- we can look at that  
04:06:56 7 report, and we can -- assuming that in October of 2016 that  
04:07:03 8 Giant Eagle followed their policies in place, if we estimate  
04:07:08 9 that there's 200 entries on that report, we could say that  
04:07:12 10 there were 200 separate investigations done, due  
04:07:15 11 diligence-type investigations done in October 2016. Would  
04:07:20 12 that be fair?

04:07:20 13 **A** I can tell you just by looking at some of them and  
04:07:23 14 understanding the report better, I mean, we have stores that  
04:07:26 15 are filling 6,000 prescriptions a week that are averaged  
04:07:29 16 against stores that are doing 300 a week. So obviously --  
04:07:33 17 and if you're doing as a chain-wide average, you're going to  
04:07:37 18 have a ton of false positives, which is predominantly a lot  
04:07:41 19 of these orders on these reports.

04:07:43 20 **Q** Well, isn't that a reason why having a chain-wide  
04:07:46 21 average isn't a very good idea?

04:07:47 22 **A** Again, it's our attempt to have a system in place.  
04:07:57 23 We're not just relying on a threshold, we're relying on a  
04:08:00 24 total system of a threshold being one of those controls.

04:08:03 25 **Q** Okay. Well, if you're relying on a system that uses

04:08:05 1 an average and you have some stores that do 300 scripts a  
04:08:10 2 week and some stores that do 6,000 scripts a week, you would  
04:08:13 3 agree with me that that average probably isn't very helpful?

04:08:16 4 **A** I would agree with you that it's probably flawed and  
04:08:22 5 it could be done better, which is why our second version of  
04:08:24 6 our threshold system was improved.

04:08:27 7 **Q** Okay. How long did Giant Eagle and HBC utilize this  
04:08:34 8 flawed version of the threshold report that used a  
04:08:37 9 chain-wide average, from 2013 until when?

04:08:40 10 **A** To be clear, I didn't say this report was flawed. I  
04:08:42 11 said the methodology of averages could lead to a false  
04:08:45 12 positive, which is what a lot of times reports -- a lot of  
04:08:51 13 times records on these reports are.

04:08:52 14 **Q** Tell me if I'm wrong, but I think you said that you no  
04:08:55 15 longer use a chain-wide average, you now use a store  
04:08:58 16 average --

04:08:58 17 **A** Correct.

04:08:59 18 **Q** -- as we sit here today in 2018, correct?

04:09:03 19 **A** Correct.

04:09:04 20 **Q** When did you stop using the chain-wide average that  
04:09:07 21 you indicated is somewhat of a flawed methodology that can  
04:09:09 22 produce false positives?

04:09:12 23 **A** Yeah, it can produce false positives. Till 2017. We  
04:09:17 24 changed, early 2017.

04:09:18 25 **Q** So if we were to look at the life of HBC's and Giant

04:09:25 1 Eagle's threshold program, from 2009 to 2013, there was no  
04:09:28 2 threshold program. From 2013 to 2017, there was a threshold  
04:09:32 3 program based on a chain-wide average. And from 2017  
04:09:36 4 through present, there's a threshold program that's based on  
04:09:41 5 individual stores' metrics setting the threshold?

04:09:54 6 **A** Correct.

04:09:55 7 **Q** Okay. From 2009 to 2013, what would cause HBC to  
04:09:59 8 perform a due diligence investigation? What about their  
04:10:02 9 system, what flags within the system would cause HBC to  
04:10:07 10 perform a due diligence investigation?

04:10:08 11 **A** So as we established earlier, we know what products  
04:10:14 12 are coming into our warehouse, what products are going out  
04:10:17 13 to our stores. Any pattern that would show our procurement  
04:10:21 14 team as well as the warehouse team, if they saw a spike in  
04:10:24 15 orders or a deviation of sorts from that, they would see  
04:10:28 16 that and they would recognize that.

04:10:31 17 **Q** In 2009 until 2013, are you able to identify for me  
04:10:34 18 any orders for hydrocodone combination products that due  
04:10:40 19 diligence was ever performed on?

04:10:47 20 **A** I believe there is, but -- when you say -- so orders,  
04:10:57 21 obviously orders were placed from 2009 to 2013. I can see  
04:11:04 22 e-mails and investigative e-mails going back and forth on  
04:11:07 23 questions on orders or product movement, et cetera. So I  
04:11:16 24 did see that through my diligence.

04:11:20 25 But your exact -- I'm sorry, I'm trying to understand

04:11:23 1 your exact --

04:11:24 2 **Q** I'm trying to determine whether or not from 2009 till  
04:11:27 3 2013 you can identify for me any orders on which due  
04:11:32 4 diligence was performed by HBC.

04:11:36 5 **A** I don't know.

04:11:37 6 **Q** You agree with me that any investigation that was  
04:11:40 7 being done by Giant Eagle or HBC is happening after the  
04:11:45 8 orders have been shipped, correct?

04:11:46 9 **A** Perhaps, yes, perhaps.

04:11:52 10 **Q** Let me just ask it this way. Did HBC or Giant Eagle  
04:11:55 11 have any policy in place that any orders that popped on the  
04:11:58 12 threshold report were not shipped until they'd been cleared?

04:12:04 13 **A** Not that I could find a policy.

04:12:07 14 **Q** You don't remember any times where you had to turn a  
04:12:09 15 truck around, don't remember any times where you had to call  
04:12:11 16 a pharmacy and ask them to put a tote to the side and not  
04:12:15 17 open it; that hasn't happened?

04:12:17 18 **A** Not that I've seen in what I've looked at.

04:12:19 19 **Q** So every time that orders have been flagged or popped  
04:12:25 20 on this threshold report going back to 2013, they've always  
04:12:31 21 been shipped and they've never been brought back?

04:12:35 22 **A** As far as I can tell, no.

04:12:37 23 **Q** 2013 through, have there ever been any controlled  
04:12:48 24 substances that have been flagged on this report that have  
04:12:52 25 not been shipped to the stores?



04:12:53 1 **A** The orders that have been flagged on this report were  
04:12:56 2 received by the stores, is that your question?

04:13:03 3 **Q** I think you answered my question.

04:13:04 4 So every report -- every entry that's flagged here on  
04:13:07 5 this report was sent to the stores, correct?

04:13:09 6 **A** But every entry on these stores, none of them were  
04:13:12 7 flagged as suspicious. They were all investigated and  
04:13:14 8 cleared.

04:13:15 9 **Q** From 2009 to 2014, did HBC ever report as suspicious  
04:13:24 10 any orders for hydrocodone combination products?

04:13:26 11 **A** As a Schedule III, while it was classified as Schedule  
04:13:30 12 III, no. In general, no, but it was Schedule III during  
04:13:33 13 that time.

04:13:34 14 **Q** Okay. And never once during that time period did HBC  
04:13:37 15 ever report any orders of that product as being suspicious?

04:13:41 16 **A** That's correct.

04:13:41 17 **Q** From 2009, when HBC first began distributing  
04:13:47 18 controlled substances, until the present, so all the way  
04:13:50 19 through HBC's lifetime and now through the Giant Eagle Rx  
04:13:57 20 distribution center, how many suspicious orders have been  
04:14:02 21 reported to the DEA?

04:14:03 22 **A** To answer your question, up until the date of June 1  
04:14:07 23 of 2018, two. Two orders.

04:14:12 24 **Q** How many of those suspicious orders that were  
04:14:15 25 reported, how many of those two orders were for hydrocodone

04:14:20 1 combination products?

04:14:22 2 **A** Zero.

04:14:36 3 Should I give this back to you or --

04:14:38 4 **Q** Just put it here.

04:14:39 5 **A** Okay.

04:14:39 6 **Q** I'm going to show you what I'll mark as Exhibit 18.

04:14:52 7 It's HBC 1005 internally.

04:14:58 8 And if you would start for me, please, at the

04:15:06 9 beginning of the e-mail chain on page 2.

04:15:11 10 **A** Pointer 2?

04:15:13 11 **Q** Correct. It starts halfway down the page with an

04:15:16 12 e-mail from Robert McClune.

04:15:18 13 Do you see that?

04:15:19 14 **A** Yes.

04:15:19 15 **Q** The subject of the e-mail is Thrifty White Notes. It

04:15:22 16 says, "Team, I wanted to send a note out regarding our trip

04:15:26 17 to Thrifty White yesterday in conjunction with the planned

04:15:28 18 warehouse move vault and refrigeration."

04:15:31 19 Do you see that?

04:15:32 20 **A** Yes.

04:15:32 21 **Q** What is Thrifty White?

04:15:33 22 **A** Thrifty White is another regional pharmacy chain.

04:15:37 23 **Q** So it says "The team went to Thrifty White yesterday."

04:15:39 24 Then it says in the next paragraph, "Please chime into this

04:15:43 25 e-mail stream with your Thrifty White notes. Do not worry

04:15:46 1 about duplication. Just bring them."

04:15:47 2 Do you see that?

04:15:48 3 **A** Yes.

04:15:48 4 **Q** And then if you look at the bottom of that page and  
04:15:51 5 flip to the next page, you just kind of see a set of bullet  
04:15:54 6 points, and there's a heading in there about Thrifty White  
04:15:57 7 notes.

04:15:58 8 Do you see that?

04:15:59 9 **A** Yes.

04:15:59 10 **Q** Okay. And if we flip through back to the first page  
04:16:01 11 of the document. Do you see the response from Joe Millward,  
04:16:07 12 who I think you said was head of the Compliance department?

04:16:11 13 **A** Yes.

04:16:11 14 **Q** Okay. And he writes, "Here are my notes," and the  
04:16:15 15 title of his notes are "Thrifty White visit notes,  
04:16:20 16 8/19/2015."

04:16:22 17 Are you with me?

04:16:22 18 **A** Yes.

04:16:23 19 **Q** Note number 1 is, "Keep engaged with the DEA through  
04:16:27 20 all steps of the process."

04:16:28 21 Do you see that?

04:16:29 22 **A** Yes.

04:16:30 23 **Q** Okay. His second note that he writes is, "It is  
04:16:33 24 critical to have a robust suspicious order monitoring  
04:16:40 25 program."

04:16:41 1 Do you see that?

04:16:41 2 **A** Yes.

04:16:42 3 **Q** Would you agree that from 2009 to 2014, HBC did not  
04:16:50 4 have a robust suspicious order monitoring program?

04:16:58 5 **A** I do not.

04:16:59 6 **Q** The next sentence says, "Relying on thresholds is not  
04:17:02 7 good enough for the DEA."

04:17:04 8 Do you see that?

04:17:05 9 **A** Yes.

04:17:07 10 **Q** Okay. From '09 through '13, HBC didn't even have  
04:17:13 11 thresholds, correct?

04:17:13 12 **A** Correct.

04:17:14 13 **Q** Okay. But you still believed that the suspicious  
04:17:18 14 order monitoring program that HBC had from '09 to '13 was  
04:17:24 15 robust?

04:17:24 16 **A** Yes.

04:17:32 17 **Q** It then goes on to say, "They have a process to review  
04:17:35 18 the orders before they are filled by the distribution  
04:17:37 19 center."

04:17:38 20 Do you see that?

04:17:39 21 **A** Yes.

04:17:45 22 **Q** Okay. And in fact, that's inopposite to HBC and Giant  
04:17:52 23 Eagle's system where the orders are filled and then reviewed  
04:17:56 24 afterwards, correct?

04:18:02 25 **A** An investigation -- there could be situations where

04:18:06 1 investigation is happening while orders are in transit for  
04:18:09 2 delivery, yes.

04:18:10 3 **Q** So HBC and Giant Eagle did not have a program to  
04:18:17 4 review the orders before they're filled?

04:18:19 5 **A** Giant Eagle had a process. Some of the investigative  
04:18:23 6 work would not have been before the order was shipped.

04:18:28 7 **Q** Okay. Then number 3 says that -- Thrifty White, is  
04:18:40 8 that a standalone wholesale distributor or is that a  
04:18:44 9 distributor and a pharmacy?

04:18:45 10 **A** It's a pharmacy.

04:18:49 11 **Q** Okay. So I went through a list earlier of other folks  
04:18:55 12 that distribute to themselves.

04:18:56 13 Thrifty White would fall into this bucket as well,  
04:18:59 14 correct, of pharmacies that distribute to themselves?

04:19:02 15 **A** Yes.

04:19:02 16 **Q** Okay. Number 3, it says, "Thrifty White has  
04:19:11 17 instituted guardrails for dispensing of controlled  
04:19:14 18 substances."

04:19:14 19 And then down below it, if you go down there's an A  
04:19:16 20 and B, and then there's a little lower case I, and then it  
04:19:20 21 gives some examples of flags.

04:19:21 22 Do you see that?

04:19:21 23 **A** Yes.

04:19:22 24 **Q** And it talks about this cash versus insurance,  
04:19:24 25 something we've talked about a little bit already, correct?

04:19:27 1 **A** Yes.

04:19:28 2 **Q** It talks about geographical relationship of the  
04:19:32 3 prescriber and the patient to the pharmacy?

04:19:34 4 **A** Yes.

04:19:35 5 **Q** Talks about combo drugs or combination of controls  
04:19:39 6 being dispensed.

04:19:40 7 Do you see that?

04:19:41 8 **A** Yes.

04:19:41 9 **Q** And again, these are all factors that we ultimately  
04:19:44 10 end up seeing in a Giant Eagle policy that comes up in 2015,  
04:19:49 11 correct?

04:19:53 12 **A** Components of this, yes.

04:19:54 13 **Q** I'm going to show you what I'll mark as Exhibit Number  
04:19:58 14 20.

04:19:58 15 This is HBC 1023, which we're marking as Exhibit 20.

04:20:08 16 And if we look at the first page, do you recognize  
04:20:09 17 this to be an e-mail from Adam Zakin in March of 2016?

04:20:15 18 **A** Yes.

04:20:19 19 **Q** Do you see it says, "Hello, Joseph and George. As a  
04:20:23 20 follow-up to our discussions, I have attached our SOM  
04:20:26 21 solution proposal for your review. Once you've had a chance  
04:20:27 22 to review this internally, we would welcome an opportunity  
04:20:29 23 to talk through our two SOM options and answer any questions  
04:20:32 24 you have."

04:20:32 25 Do you see that?

04:20:34 1 **A** Yes.

04:20:34 2 **Q** And that's from Gary at Buzzeeo.

04:20:37 3 Do you see that?

04:20:37 4 **A** Yes.

04:20:41 5 **Q** Do you know what the purpose of Buzzeeo, what service  
04:20:44 6 it is that they provide?

04:20:45 7 **A** Consultant services that they provide.

04:20:50 8 **Q** And what he's indicating here I think you'll see as we  
04:20:54 9 go through, he wants to talk to Joe Millward and Joe  
04:20:57 10 Chunderlik regarding suspicious order monitoring programs,  
04:20:59 11 correct?

04:20:59 12 **A** Yeah. He's a salesman trying to pitch a solution or a  
04:21:03 13 consultant or consulting engagement, sure.

04:21:05 14 **Q** Okay. If we go back to the first page and we go about  
04:21:09 15 two-thirds of the way down, you see an e-mail from George  
04:21:12 16 Chunderlik?

04:21:14 17 **A** First page?

04:21:15 18 **Q** Yes, about two-thirds of the way down.

04:21:18 19 **A** Okay.

04:21:18 20 **Q** Are you with me? George Chunderlik on March 24, 2016?

04:21:24 21 **A** Yes, mm-hmm.

04:21:25 22 **Q** George says, "I think it would be worthwhile to talk  
04:21:27 23 to these guys about their SOM program. I'm curious to see  
04:21:30 24 their products. I'm going to set something up for us and  
04:21:33 25 include Jason, unless you have any objections."

04:21:35 1 Do you see that?

04:21:35 2 **A** Yes.

04:21:35 3 **Q** If you go back up to the top of the page, you see  
04:21:40 4 Adam's response, correct?

04:21:42 5 **A** Yes.

04:21:42 6 **Q** He says, "We saw this. We're not there. At the end  
04:21:46 7 of the day, the only thing it did that our current system  
04:21:49 8 would not do was stop the orders physically if there was a  
04:21:52 9 threshold."

04:21:53 10 Do you see that?

04:21:53 11 **A** Yes.

04:21:53 12 **Q** So in March of 2016, HBC or Giant Eagle, their current  
04:22:03 13 system would not physically stop the orders that rose above  
04:22:11 14 the threshold, correct?

04:22:12 15 **A** Correct.

04:22:16 16 **Q** I'm going to show you what I've marked as HBC 1027 --  
04:22:20 17 or which is HBC 1027, which I'm going to mark as Exhibit 21.

04:22:24 18 The e-mail is from an individual named James Cornwell,  
04:22:28 19 written in August of 2016. And the subject of that e-mail  
04:22:32 20 is Order Item Blocking, December 5, 2013.

04:22:37 21 Do you see that?

04:22:38 22 **A** Yes.

04:22:39 23 **Q** Do you know who Mr. Cornwell is?

04:22:40 24 **A** Yes.

04:22:41 25 **Q** Who is he and what does he do?



04:22:42 1 **A** He's on the IT team. He works on the IT side.

04:22:45 2 **Q** He writes this e-mail. He says, "Dominic, Phil, I  
04:22:50 3 didn't find much on this. I do see the SQL was written by  
04:22:53 4 Kayla."

04:22:54 5 Do you know what SQL means?

04:22:55 6 **A** Sequel, yes.

04:23:00 7 **Q** What does that mean?

04:23:00 8 **A** Sequel code.

04:23:02 9 **Q** Okay. So she designed the program that's generating  
04:23:04 10 the report? Explain that for me, please.

04:23:07 11 **A** I know what SQL means. I don't know who Kayla is.

04:23:15 12 **Q** Okay. It goes on to say, "The requirements were  
04:23:18 13 utilizing a monthly average looking back at the last 12  
04:23:21 14 months that had each item ordered based on GPI."

04:23:25 15 Do you see that?

04:23:26 16 **A** Yes.

04:23:26 17 **Q** Is that describing the threshold system that was put  
04:23:28 18 in place in 2013?

04:23:30 19 **A** Yes.

04:23:34 20 **Q** It says, "This value was a monthly accumulation that  
04:23:37 21 reset the first of each month which mirrored McKesson's  
04:23:41 22 system but left big holes in our logic."

04:23:44 23 Do you see that?

04:23:45 24 **A** Yes.

04:23:45 25 **Q** Do you know what big holes Mr. Cornwell's referring to

04:23:48 1 there?

04:23:48 2 **A** I do not.

04:23:49 3 **Q** But you agree it would not be a good thing to have big  
04:23:52 4 holes in your suspicious order monitoring program?

04:23:54 5 **A** I think generally big holes are a bad thing.

04:23:57 6 **Q** "If the item showed on the report, George evaluated  
04:24:00 7 it, and if it was determined it should be blocked, a  
04:24:03 8 blocking form was filled out."

04:24:05 9 Do you see that?

04:24:05 10 **A** Yes.

04:24:05 11 **Q** It goes on to say, "The form expired at the end of  
04:24:09 12 each month, again a problem."

04:24:10 13 Do you see that?

04:24:11 14 **A** Yes.

04:24:11 15 **Q** I'm going to show you HBC 1033, which I'm going to  
04:24:16 16 mark as Exhibit Number 22.

04:24:20 17 And the subject of the e-mail is Suspicious Order  
04:24:23 18 Monitoring.

04:24:24 19 Do you see that?

04:24:25 20 **A** Yes.

04:24:25 21 **Q** And it says, "Scope document attached we will review  
04:24:30 22 during tomorrow's call."

04:24:32 23 Do you see that?

04:24:32 24 **A** Yes.

04:24:32 25 **Q** Turn to page 3 for me, .3 in the top right.

04:24:50 1 **A** .3?

04:24:51 2 **Q** Yes. And there at 1.0 it says stakeholders.

04:24:58 3 **A** Yes.

04:24:58 4 **Q** Can you tell me what's meant by that?

04:25:00 5 **A** Stakeholders, I mean -- I would read it as I'm reading  
04:25:12 6 it here, folks that are involved in a particular meeting or  
04:25:16 7 constituents as part of a project, I guess.

04:25:23 8 **Q** As far as the stakeholders that are listed here, the  
04:25:25 9 project sponsor is Mark Doerr, senior vice president of  
04:25:32 10 Pharmacy?

04:25:32 11 **A** Yes.

04:25:32 12 **Q** Is he still with the company?

04:25:34 13 **A** He is not.

04:25:37 14 **Q** Are you serving in that position now?

04:25:38 15 **A** I am, yes.

04:25:39 16 **Q** Okay. Turn to page .4.

04:25:43 17 It says, "Prior to January 2016, Giant Eagle's drug  
04:25:48 18 control program was limited to the monitoring of store-based  
04:25:51 19 dispensing of Schedule II narcotics."

04:25:54 20 Do you see that?

04:25:55 21 **A** Yes.

04:25:55 22 **Q** It says, "Giant Eagle's primary and secondary  
04:26:00 23 suppliers of C-II products were responsible for the  
04:26:04 24 monitoring of orders from distribution centers to Giant  
04:26:05 25 Eagle retail pharmacies."

04:26:06 1 Do you see that?

04:26:07 2 **A** Yes.

04:26:07 3 **Q** So let me ask you a couple questions about that.

04:26:09 4 From 2009 through 2014 -- I think we covered this this

04:26:17 5 morning, but Giant Eagle did dispense Schedule II drugs.

04:26:20 6 They just did not get them from HBC, correct?

04:26:22 7 **A** Correct.

04:26:22 8 **Q** From '09 to '14, HBC is only distributing Schedule

04:26:29 9 III, IV, and V drugs, right?

04:26:32 10 **A** Correct.

04:26:32 11 **Q** But because these Schedule II drugs which are coming

04:26:34 12 from, I think you said, McKesson and Anda, are going to

04:26:38 13 Giant Eagle pharmacies, information or data about how many

04:26:42 14 Schedule II drugs or the frequency of Schedule II drugs or

04:26:45 15 the quantity of Schedule II drugs going to those pharmacies,

04:26:49 16 that is information that would have been available to HBC?

04:26:53 17 **A** HBC didn't distribute those. So, I mean, Giant Eagle  
04:26:56 18 is aware of those purchases.

04:26:59 19 Is that your question?

04:26:59 20 **Q** My question to you is a little bit different.

04:27:02 21 If they wanted to, could they have determined the

04:27:04 22 quantity of C-II drugs going into the Giant Eagle

04:27:09 23 pharmacies? That's information that could have been

04:27:11 24 available to HBC just like the percentage of controlled

04:27:15 25 versus noncontrolled that were being dispensed by the

04:27:19 1 pharmacy, correct?

04:27:20 2 **A** Sure.

04:27:21 3 **Q** We talked this morning about -- you know, you claim  
04:27:25 4 that HBC had a suspicious order monitoring program from '09  
04:27:30 5 to '14, I think you said it was an integrated program with  
04:27:34 6 these different players involved.

04:27:38 7 I'm asking if one of the factors that was looked at by  
04:27:41 8 HBC was the quantity and pattern of C-IIs going into the  
04:27:46 9 stores.

04:27:47 10 **A** HBC wouldn't have been looking at the C-IIs of -- they  
04:27:51 11 wouldn't have been looking at products that it doesn't  
04:27:53 12 distribute.

04:27:54 13 **Q** Okay.

04:27:55 14 **A** Does that answer your question? I'm sorry. I'm  
04:27:58 15 trying really hard to make sure I answer your question.

04:28:00 16 **Q** It does. Thank you.

04:28:01 17 If we go back to the first page of this document, this  
04:28:04 18 was a meeting that was being set in November of 2016; is  
04:28:09 19 that correct?

04:28:09 20 **A** I'm sorry. Where are you at?

04:28:10 21 **Q** The first page.

04:28:16 22 **A** Yes.

04:28:16 23 **Q** Okay. Sorry I'm bouncing right back, right back to  
04:28:25 24 .4, and going to the second paragraph.

04:28:27 25 **A** I'm sorry, .4.

04:28:28 1 Q It says, "The DEA regulation CFR 1301.74(b)  
04:28:33 2 specifically requires that a registrant design and operate a  
04:28:35 3 system to disclose to the registrant suspicious orders of  
04:28:38 4 controlled substances."

04:28:39 5 Do you see that?

04:28:40 6 A Yes.

04:28:40 7 Q And that's what we've been talking about a lot today,  
04:28:42 8 correct?

04:28:42 9 A Yes.

04:28:43 10 Q Okay. It goes on to say, "Purposely vague, the DEA  
04:28:47 11 leads the registrant," which is Giant Eagle here," to  
04:28:49 12 interpret the elements and metrics of monitoring the  
04:28:54 13 system," correct?

04:28:54 14 A Yes.

04:28:55 15 Q It then goes on to say, "It is the belief of the  
04:28:58 16 business that Giant Eagle's suspicious order monitoring  
04:29:00 17 program is 75 to 85 percent of where it needs to be."

04:29:03 18 Do you see that?

04:29:03 19 A Yes.

04:29:03 20 Q Let me ask it this way. This is a November 2016  
04:29:08 21 document, correct?

04:29:09 22 A Yes.

04:29:09 23 Q And what's being said here is that Giant Eagle  
04:29:12 24 believes that their suspicious order monitoring program is  
04:29:15 25 only 75 to 85 percent of where it needs to be, correct?

04:29:19 1 **A** That's what it says, yes.

04:29:20 2 **Q** Okay. And we know that in the two years prior to  
04:29:24 3 this, there was actually some progress made, correct? In  
04:29:28 4 August of 2014, for the first time HBC had a written policy  
04:29:31 5 to monitor for suspicious orders, correct?

04:29:34 6 **A** Yes.

04:29:34 7 **Q** In 2015, they issued a second version of that policy,  
04:29:39 8 correct?

04:29:39 9 **A** Yes.

04:29:39 10 **Q** In 2015, they also for the first time had a written  
04:29:45 11 policy that provided for some detailed investigation to be  
04:29:48 12 performed on potential suspicious orders, including factors  
04:29:52 13 like the geographical location of the prescriber, the  
04:29:56 14 geographical location of the patient, the geographical  
04:29:58 15 location of the pharmacy in relation to all those, the  
04:30:01 16 percentages of cash versus third-party payer.

04:30:06 17 Do you recall that?

04:30:07 18 **A** Yes.

04:30:07 19 **Q** And all that came out in 2015, correct?

04:30:12 20 **A** Of the written form, yes.

04:30:13 21 **Q** So you agree there were some steps taken between  
04:30:16 22 August 2014 and the date of this document, November of 2016,  
04:30:20 23 that were some fairly significant steps for HBC and Giant  
04:30:23 24 Eagle as far as their controlled substance monitoring plan,  
04:30:26 25 correct?

04:30:27 1 **A** Yes. And then this document here was the company's  
04:30:31 2 efforts to further the electronic portions of that system.

04:30:37 3 **Q** Okay. But here in November of 2016, after all those  
04:30:41 4 steps and the written policies that we talked about earlier  
04:30:45 5 today and that I summarized just now, even after those steps  
04:30:48 6 since August of 2014, it was still HBC and Giant Eagle's  
04:30:51 7 belief in November of 2016 that their program was only 75 to  
04:30:58 8 85 percent of where it needs to be, correct?

04:30:59 9 **A** I don't agree.

04:31:01 10 **Q** Is that what it says here in the document?

04:31:02 11 **A** That's what it says here in this document, but I don't  
04:31:05 12 understand -- I don't have a clear understanding of what the  
04:31:10 13 75 to 85 percent is referring to because it's written by --  
04:31:19 14 I want to make sure -- it's written by the IT department.  
04:31:24 15 So there was many things, as I looked through a lot of  
04:31:28 16 systems that were being built, a lot of automated things  
04:31:31 17 that required a lot of system integrations, warehouse  
04:31:35 18 integrations.

04:31:37 19 So I don't know what this is being referred to as 75  
04:31:40 20 to 85 percent.

04:31:42 21 **Q** But you're not disputing that the document says it's  
04:31:45 22 the belief of the business that Giant Eagle's suspicious  
04:31:49 23 order monitoring in November of 2016 is 75 to 85 percent of  
04:31:53 24 where it needs to be? You're not disputing that, are you?

04:31:55 25 **A** I'm not disputing what it says, no.



04:31:58 1 Q As I listened to you explain the system that was in  
04:32:00 2 place between 2009 and 2014 at HBC, it's my understanding  
04:32:06 3 that there was communication between HBC and the Giant Eagle  
04:32:12 4 pharmacies on a regular basis.

04:32:16 5 A There's communication between the warehouse, Pharmacy  
04:32:22 6 operations, corporate. So it was not uncommon to have  
04:32:26 7 dialogue and communication amongst those three teams, and  
04:32:32 8 Loss Prevention, the constituents internally, all the  
04:32:36 9 stakeholders.

04:32:37 10 Q Similarly, there was sharing of information, so if a  
04:32:39 11 question existed by HBC about a shipment, there was an  
04:32:42 12 e-mail chain that somebody could e-mail to a colleague at  
04:32:45 13 Giant Eagle to get information; is that right?

04:32:47 14 A There was an ability to, sure.

04:32:49 15 Q And we've seen some of these e-mails today, right?

04:32:52 16 A Yes.

04:32:52 17 Q And as I understand it from the spreadsheets we were  
04:32:56 18 just looking at, did HBC have access to Giant Eagle  
04:33:00 19 pharmaceutical data?

04:33:08 20 UNIDENTIFIED SPEAKER: I think this has been  
04:33:10 21 covered already.

04:33:12 22 A Sure, yes.

04:33:13 23 Q If a pharmacist at Giant Eagle had a question or had a  
04:33:15 24 concern they wanted to express to HBC, they could do that by  
04:33:18 25 e-mail?

04:33:18 1 **A** If a pharmacist?

04:33:19 2 **Q** Yes.

04:33:22 3 **A** Sure, they could.

04:33:23 4 **Q** Mr. Tsipakis, you were asked some questions about the  
04:33:27 5 so-called suspicious order regulation of 1301.74(b).

04:33:37 6 Do you remember that?

04:33:40 7 **A** Yes.

04:33:40 8 **Q** Were you shown during your deposition at any time the  
04:33:43 9 security regulation in 1301.71 of the Code of Federal  
04:33:51 10 Regulations?

04:33:51 11 **A** I was not.

04:33:52 12 **Q** What do you understand the security regulation to be?

04:33:56 13 **A** The security regulation in its entirety is meant to --  
04:33:59 14 for a registrant to have proper controls to prevent  
04:34:03 15 diversion and theft.

04:34:05 16 **Q** And do you understand that to be the main requirement  
04:34:10 17 that distributors are supposed to meet?

04:34:12 18 **A** Yes.

04:34:12 19 **Q** Did HBC meet that requirement at all times?

04:34:17 20 **A** Yes.

04:34:18 21 **Q** Now, do you understand that the one part of the  
04:34:22 22 regulation that was shown to you, the 1301.74, the one that  
04:34:27 23 says "Design and operate a system to disclose to the  
04:34:32 24 registrant suspicious orders of controlled substances," do  
04:34:35 25 you understand that to be the only factor taken into

04:34:37 1 consideration for the security requirement?

04:34:43 2 **A** It's not the only factor, no.

04:34:44 3 **Q** What are some of the other factors?

04:34:46 4 **A** Physical security, record keeping; basically multiple  
04:34:51 5 controls at all levels in the distribution chain.

04:35:05 6 **Q** And is it your understanding under the security  
04:35:09 7 requirement regulation that you're supposed to look at the  
04:35:12 8 registrant's overall security system, or do you just look at  
04:35:16 9 the piece called suspicious order monitoring system?

04:35:22 10 **A** The overall system. The overall system, a lot of  
04:35:28 11 different factors is listed in the type of controls that are  
04:35:31 12 distributed, the type of chemicals, et cetera. So there's a  
04:35:35 13 whole host of things that go into that.

04:35:38 14 **Q** And you told us under questioning by plaintiffs'  
04:35:42 15 counsel that HBC was never a Controlled Substance II  
04:35:46 16 facility; is that correct?

04:35:47 17 **A** That's correct.

04:35:47 18 **Q** So when determining compliance with the security  
04:35:51 19 requirement, did HBC take into account that it was never a  
04:35:56 20 Controlled Substance II distributor?

04:36:00 21 **A** Yes.

04:36:01 22 **Q** Okay. Did HBC also consider the quantity of the  
04:36:06 23 controlled substances it was handling when it designed its  
04:36:11 24 overall security system?

04:36:12 25 **A** Yes.

04:36:12 1 Q Did it consider its internal controls over the  
04:36:17 2 receipt, manufacture, distribution, and disposition of the  
04:36:21 3 controlled substances it was handling?

04:36:23 4 A Yes.

04:36:23 5 Q Did it consider the physical security facilities that  
04:36:26 6 it had?

04:36:27 7 A Of course, yes.

04:36:29 8 Q And while HBC was distributing Controlled Substance  
04:36:43 9 IIIs, IVs, and Vs, did it get visited frequently by the DEA  
04:36:47 10 to perform audits and inspections?

04:36:49 11 A Yes, it was visited by the DEA.

04:36:50 12 Q Did the DEA ever say to HBC "You're not meeting the  
04:36:53 13 security requirement under the regulations"?

04:36:55 14 A To my knowledge, no.

04:36:57 15 Q Are you aware of any DEA regulation that says you're  
04:37:09 16 supposed to use a threshold-based system to monitor for  
04:37:12 17 suspicious orders?

04:37:12 18 A No.

04:37:13 19 Q Are you aware of any DEA regulation that requires you  
04:37:19 20 to set a threshold at any level?

04:37:21 21 A No.

04:37:21 22 Q Are you aware of the DEA's efforts for many years in  
04:37:26 23 the late '08, '09, '10 period, with respect to Internet  
04:37:31 24 pharmacies?

04:37:32 25 A Yes.

04:37:32 1 Q And can you just briefly summarize those for us?

04:37:35 2 A Certainly. There was a lot of pop-up pharmacies on  
04:37:39 3 the Internet that the DEA was cracking down on and certainly  
04:37:41 4 there wasn't a valid patient-prescriber relationship, and  
04:37:46 5 the DEA, the DEA had ramped up regulatory efforts against  
04:37:52 6 those to curb them or shut them down.

04:37:56 7 Q Did Giant Eagle in any -- I'm sorry, did HBC or Giant  
04:38:00 8 Eagle at any time ever supply an Internet pharmacy at any  
04:38:03 9 time?

04:38:03 10 A No.

04:38:03 11 Q Now, with respect to the physical structure of the HBC  
04:38:07 12 warehouse, did you have a locked cage?

04:38:10 13 A Yes.

04:38:11 14 Q Was there controlled access to that locked cage?

04:38:14 15 A Yes.

04:38:14 16 Q Was that locked cage inspected and approved by the  
04:38:17 17 DEA?

04:38:18 18 A Yes.

04:38:18 19 Q Was admittance to the locked cage limited to only  
04:38:26 20 certain personnel?

04:38:26 21 A Yes.

04:38:27 22 Q And was there limited entry for the number of  
04:38:31 23 personnel?

04:38:31 24 A Yes.

04:38:31 25 Q And what was that number, do you recall?

04:38:35 1 **A** Three or four individuals only.

04:38:41 2 **Q** And did they -- were they using any type of digital  
04:38:44 3 inventory system with scanners and wristbands, and things of  
04:38:47 4 that nature, while they were inside the controlled substance  
04:38:49 5 locked area?

04:38:50 6 **A** Yes.

04:38:50 7 **Q** Do you know the name of that system?

04:38:53 8 **A** I believe Volcom might be the right -- or -- I think  
04:39:01 9 it's Volcom.

04:39:02 10 **Q** Can you spell that, please? The court reporter seems  
04:39:05 11 to be --

04:39:05 12 **A** V-O-L-C-O-M.

04:39:08 13 **Q** Okay. And is that system a form of perpetual  
04:39:14 14 inventory system?

04:39:14 15 **A** Yes.

04:39:15 16 **Q** Is that a type of internal control at the warehouse?

04:39:21 17 **A** Sure, yes.

04:39:22 18 **Q** The controlled substance orders that were picked at  
04:39:26 19 the warehouse, the HBC warehouse, were they double-checked  
04:39:29 20 before shipping?

04:39:29 21 **A** Yes.

04:39:30 22 **Q** Were there physical safeguards to prevent theft and  
04:39:34 23 diversion at that warehouse?

04:39:35 24 **A** Yes.

04:39:36 25 **Q** Even while picking the orders?

04:39:38 1 **A** Yes.

04:39:38 2 **Q** Can you just describe a few of them?

04:39:41 3 **A** So there would be daily audits, back-counts. The  
04:39:48 4 system would make sure that all of the inventory would tie  
04:39:54 5 up.

04:39:56 6 **Q** So if there was any product missing, would it be found  
04:39:58 7 fairly promptly?

04:39:59 8 **A** Oh, yes.

04:40:01 9 **Q** Was there a daily warehouse inventory for controlled  
04:40:06 10 substances?

04:40:06 11 **A** Yes.

04:40:06 12 **Q** Were there security guards and cameras throughout the  
04:40:15 13 facility?

04:40:15 14 **A** Yes, multiple.

04:40:17 15 **Q** Were there -- besides the daily inventories, were  
04:40:20 16 there yearly inventories and biannual DEA inventories?

04:40:23 17 **A** Yes.

04:40:23 18 **Q** Was the warehouse overseen by the Giant Eagle Audit  
04:40:26 19 and Accounting department?

04:40:28 20 **A** Sure, yes.

04:40:30 21 **Q** You're a pharmacist; is that correct?

04:40:33 22 **A** Yes.

04:40:33 23 **Q** What kind of degrees in pharmacy do you have?

04:40:38 24 **A** Bachelor of Science in Pharmacy.

04:40:39 25 **Q** And were you a practicing pharmacist in a store for a

04:40:42 1 period of time?

04:40:43 2 **A** Yes.

04:40:43 3 **Q** Was that for a different chain, Albertsons?

04:40:47 4 **A** Yes.

04:40:47 5 **Q** Are you familiar with dispensing practices and things  
04:40:51 6 of that nature?

04:40:52 7 **A** Yes.

04:40:52 8 **Q** You -- in your direct testimony upon questioning by  
04:40:58 9 Mr. Gaddy, you referenced this integrated control system,  
04:41:03 10 and you referenced three parts to it; at the warehouse, at  
04:41:07 11 corporate, and at the stores.

04:41:08 12 Do you recall that testimony?

04:41:09 13 **A** Yes.

04:41:09 14 **Q** At the stores, are there internal controls over  
04:41:14 15 controlled substances?

04:41:16 16 **A** Sure, yes.

04:41:17 17 **Q** Are there physical controls over controlled  
04:41:19 18 substances?

04:41:19 19 **A** Yes.

04:41:20 20 **Q** Does that include vaults -- I'm sorry, not vaults, but  
04:41:24 21 safes and things of that nature?

04:41:26 22 **A** Locked cabinets and safes, yes.

04:41:28 23 **Q** And who's allowed access to those locked cabinets and  
04:41:30 24 safes?

04:41:31 25 **A** Only the pharmacists.



04:41:33 1 Q Does Giant Eagle have a mechanism to train pharmacists  
04:41:36 2 to keep tight control over controlled substances?

04:41:39 3 A Yes.

04:41:39 4 Q And is that monitored by Loss Prevention and Internal  
04:41:44 5 Audit?

04:41:45 6 A Yes.

04:41:45 7 Q And are pharmacists and pharmacy techs trained and  
04:41:53 8 supervised?

04:41:53 9 A Yes.

04:41:53 10 Q Does Giant Eagle at the store level impose policies  
04:41:57 11 and procedures on the pharmacists and the pharmacy techs  
04:42:02 12 with respect to dispensing prescriptions?

04:42:05 13 A Yes.

04:42:05 14 Q Are you familiar with the DEA pharmacist manual?

04:42:10 15 A Of course, yes.

04:42:11 16 Q Is that something that's kept at every Giant Eagle  
04:42:14 17 pharmacy?

04:42:14 18 A Yes.

04:42:14 19 Q And are the pharmacists required to review it and sign  
04:42:17 20 off on it?

04:42:18 21 A Yes.

04:42:18 22 Q Does Giant Eagle have controlled substance dispensing  
04:42:24 23 guidelines?

04:42:24 24 A Yes.

04:42:24 25 Q And do those guidelines include red flags, things to

04:42:29 1 watch for in terms of whether a prescription is legitimate  
04:42:32 2 or not?

04:42:33 3 **A** Yes.

04:42:33 4 **Q** And are they required to review those and sign off  
04:42:36 5 that they've been trained on it and understand them?

04:42:38 6 **A** Yes.

04:42:38 7 **Q** And are all of Giant Eagle's pharmacists licensed  
04:42:43 8 pharmacists with experience?

04:42:44 9 **A** Yes.

04:42:44 10 **Q** Are there other manuals containing policies at the  
04:42:49 11 store level related to controlled substance other than the  
04:42:55 12 DEA pharmacist manual and the controlled substance  
04:42:58 13 dispensing guidelines?

04:42:58 14 **A** Yes.

04:42:59 15 **Q** And do those policies include controls over all  
04:43:04 16 controlled substances?

04:43:06 17 **A** Yes.

04:43:06 18 **Q** Do the stores interface with any statewide systems to  
04:43:12 19 make sure that incoming prescriptions are legitimate?

04:43:18 20 **A** Sure, yes.

04:43:18 21 **Q** In the state of Ohio, is there a name for that system?

04:43:21 22 **A** Sure. It's the prescription drug monitoring program,  
04:43:24 23 the OARRS program.

04:43:25 24 **Q** And is that something that the pharmacists are trained  
04:43:29 25 to consult?

04:43:30 1 **A** Yes, oh, yes.

04:43:32 2 **Q** And will that provide some information about things  
04:43:34 3 like doctor shopping and people coming in from out of state,  
04:43:42 4 things of that nature?

04:43:43 5 **A** Yes.

04:43:43 6 **Q** And do Giant Eagle pharmacists use that system?

04:43:45 7 **A** Regularly, yes.

04:43:47 8 **Q** And does the DEA from time to time visit the stores?

04:43:50 9 **A** Sure, yes.

04:43:51 10 **Q** Do they perform surprise audits, things of that  
04:43:53 11 nature?

04:43:53 12 **A** Audits, or if they're coming in for investigations or  
04:43:57 13 other things that they're working on, sure, yes.

04:43:58 14 **Q** Do the boards of pharmacy of the states also interface  
04:44:03 15 with the stores?

04:44:04 16 **A** Yes.

04:44:05 17 **Q** Does the Ohio Board of Pharmacy interface with the  
04:44:08 18 Giant Eagle stores in these two counties at issue?

04:44:10 19 **A** Yes.

04:44:11 20 **Q** Do they perform surprise audits and inspections?

04:44:14 21 **A** Absolutely, yes.

04:44:15 22 **Q** And is the pharmacist required to immediately input --  
04:44:18 23 update the store's controlled substance inventory for  
04:44:23 24 incoming orders?

04:44:24 25 **A** Their on-hands?

04:44:27 1 Q Yes.

04:44:29 2 A Yes.

04:44:30 3 Q And when controlled substance prescriptions are  
04:44:32 4 filled, is the inventory, the store inventory immediately  
04:44:34 5 credited for the outgoing prescription?

04:44:38 6 A Yes.

04:44:38 7 Q And at the end of the day, is there a check of the  
04:44:41 8 remaining balance of controlled substances at the store?

04:44:43 9 A Yes, and especially even more so on C-IIIs. They're  
04:44:47 10 back-counted on every fill.

04:44:49 11 Q What does it mean to back-count every fill?

04:44:50 12 A So the system will prompt for how many pills are left  
04:44:54 13 in the bottle. So if you had a hundred bottles -- if you  
04:44:59 14 had a hundred pills to start and you filled 50, you would  
04:45:02 15 expect to have 50 left in that bottle. So the back-count  
04:45:06 16 would be to ensure that you had 50 left in that bottle and  
04:45:11 17 inputting that, that you do have in fact 50.

04:45:13 18 Q Are you familiar with the term "monthly narc. audit"?

04:45:17 19 A Yes.

04:45:18 20 Q What is that?

04:45:18 21 A The requirement that all of our pharmacies do a full  
04:45:22 22 inventory of C-II narcotics in our stores, and some other  
04:45:28 23 products as well. Not just C-IIIs, but some C-III.

04:45:33 24 Q So you have the daily perpetual inventory and the  
04:45:37 25 monthly narcotics?

04:45:38 1 **A** Yes.

04:45:38 2 **Q** You also have the annual audits -- or inventories of  
04:45:43 3 controlled substance at every store?

04:45:44 4 **A** The DEA requires a biannual inventory. We do an  
04:45:48 5 annual inventory on top, yes. We do a yearly inventory  
04:45:51 6 instead of biannual.

04:45:53 7 **Q** Can you tell us what a PDL is?

04:45:56 8 **A** PDL is a pharmacy -- excuse me, pharmacy district  
04:46:02 9 leader.

04:46:03 10 **Q** And what do they do?

04:46:04 11 **A** They supervise the stores. They're basically a  
04:46:06 12 district manager that oversees the stores for all aspects of  
04:46:12 13 ensuring Pharmacy Practice Act, DEA, company policy.  
04:46:19 14 They're the oversight for the stores, direct oversight for  
04:46:22 15 the stores.

04:46:23 16 **Q** Do they regularly visit the stores?

04:46:25 17 **A** Yes.

04:46:25 18 **Q** Do they conduct audits or inquiries concerning their  
04:46:30 19 procedures and things of that nature?

04:46:32 20 **A** They do audits. We also have an internal audit that  
04:46:36 21 quarterly visits the stores for a myriad of things, but yes.

04:46:43 22 **Q** Is there any supervision of training of pharmacists?

04:46:45 23 **A** Yes.

04:46:45 24 **Q** Is that something a PDL does?

04:46:48 25 **A** A PDL would definitely make sure any training that

04:46:53 1 needs to be done or computer-based training is completed,  
04:46:56 2 and if there's any remediation that's needed, that's their  
04:47:00 3 job to make sure.

04:47:01 4 **Q** Do the stores work with local law enforcement, police,  
04:47:04 5 Board of Pharmacy inspectors, DEA agents?

04:47:07 6 **A** Oh, yes, all the time.

04:47:08 7 **Q** Is that a cooperative working relationship?

04:47:11 8 **A** Very much so, yes.

04:47:13 9 **Q** In working with local law enforcement and DEA, have  
04:47:18 10 you been able to uncover people attempting to pass bad  
04:47:22 11 scripts, things of that nature?

04:47:24 12 **A** Yes.

04:47:24 13 **Q** Is there a pharmacy investigator?

04:47:35 14 **A** Yes.

04:47:35 15 **Q** Who is that?

04:47:37 16 **A** Rick Shaheen.

04:47:42 17 **Q** How much experience does he have?

04:47:43 18 **A** He has a lot of experience. He has a background in  
04:47:47 19 law enforcement, Attorney General's office, a very -- has a  
04:47:53 20 lot of contacts with DEA, boards of pharmacy. So he's been  
04:47:59 21 in the business a long time.

04:48:00 22 **Q** Does he spend a lot of time in the stores?

04:48:02 23 **A** Yes.

04:48:02 24 **Q** Does he also work individually with local law  
04:48:07 25 enforcement and DEA?

04:48:08 1 **A** Yes.

04:48:09 2 **Q** Are you familiar with the term or the acronym BOLO,  
04:48:13 3 B-O-L-O?

04:48:14 4 **A** Yes.

04:48:15 5 **Q** What is it?

04:48:15 6 **A** "Be on the lookout for." So he will send out  
04:48:21 7 bulletins to the pharmacists when either law enforcement  
04:48:24 8 will tell him that there's bad scripts on the street or a  
04:48:28 9 prescription pad, for example, if it's stolen or something,  
04:48:32 10 either if we have information -- so Rick is involved with --  
04:48:36 11 Rick and Andrew, who works for Rick, are involved in all of  
04:48:40 12 those activities and alert our stores as soon as they know  
04:48:42 13 something, and we disseminate very quickly to all our  
04:48:47 14 stores.

04:48:47 15 **Q** And is that the type of information that's also in the  
04:48:50 16 OARRS database, or is that different?

04:48:53 17 **A** Different.

04:48:53 18 **Q** It's different? Okay.

04:48:55 19 Are there daily counts of certain drugs?

04:48:59 20 **A** Yes.

04:48:59 21 **Q** Does that include HCP, hydrocodone or HCP products?

04:49:05 22 **A** Yes.

04:49:08 23 **Q** Is there an electronic prescription system with  
04:49:11 24 perpetual logs at the stores?

04:49:12 25 **A** Yes.

04:49:12 1 Q Is that a form of internal control?

04:49:15 2 A Yes.

04:49:21 3 Q Is there diversion training for pharmacy employees on  
04:49:25 4 a yearly basis?

04:49:26 5 A Yes.

04:49:27 6 Q Now, you were asked a lot of questions about so-called  
04:49:30 7 suspicious orders, and I didn't hear a lot of questioning  
04:49:36 8 about diversion.

04:49:37 9 Do you understand the term "diversion"?

04:49:38 10 A Yes.

04:49:38 11 Q What does the term "diversion" mean to you?

04:49:41 12 A The diversion, theft, loss, things being routed to  
04:49:45 13 folks that shouldn't have access to the drugs or  
04:50:00 14 prescriptions.

04:50:00 15 Q If an order is suspicious, does that mean it was  
04:50:04 16 diverted?

04:50:04 17 A No, not necessarily, no.

04:50:05 18 Q In fact, what has HBC's and Giant Eagle's experience  
04:50:11 19 been with respect to so-called suspicious orders or flagged  
04:50:13 20 orders? Have they resulted in uncovering diversion?

04:50:19 21 A No.

04:50:21 22 Q In your direct questioning today, were you shown at  
04:50:24 23 any time any evidence, any document, any piece of paper by  
04:50:27 24 plaintiffs' counsel suggesting that any single one of these  
04:50:33 25 prescriptions was anything other than a legitimate



04:50:35 1 prescription issued by a doctor who had a legitimate license  
04:50:38 2 to issue it?

04:50:41 3 **A** No.

04:50:42 4 **Q** Were you shown any evidence at any time that any of  
04:50:48 5 these prescriptions caused anybody any harm at any time in  
04:50:52 6 any jurisdiction?

04:50:53 7 **A** No.

04:50:53 8 **Q** Is Giant Eagle's integrated system designed to  
04:50:58 9 maintain the integrity of the closed system of distribution  
04:51:02 10 from incoming at the warehouse to outgoing at the stores?

04:51:07 11 **A** Yes.

04:51:07 12 **Q** You were asked by Mr. Barnes whether or not there was  
04:51:10 13 any requirement that HBC adopt a threshold program.

04:51:15 14 Do you recall that?

04:51:16 15 **A** Yes.

04:51:16 16 **Q** And you said there's not, correct?

04:51:18 17 **A** A specific threshold system? Correct.

04:51:22 18 **Q** But you agree that there absolutely is a requirement  
04:51:25 19 that HBC design and operate a system meant to detect  
04:51:31 20 suspicious orders of controlled substances, correct?

04:51:32 21 **A** Yes.

04:51:32 22 **Q** The DEA is not charged with designing and operating a  
04:51:35 23 system to do that, are they?

04:51:36 24 **A** They are not.

04:51:37 25 **Q** Well, it's a Federal Regulation.

04:51:41 1 **A** Okay.

04:51:41 2 **Q** It says that HBC has the responsibility to design and  
04:51:44 3 operate a system, correct?

04:51:46 4 **A** Yes.

04:51:47 5 **Q** Okay. So the Federal Regulation requires HBC to do  
04:51:50 6 that, not anybody else, correct?

04:51:51 7 **A** It requires the registrant, which HBC, it's ultimately  
04:52:01 8 Giant Eagle, yes.

04:52:01 9 **Q** Okay. And that includes individuals or entities such  
04:52:04 10 as HBC which were distributing Schedule III controlled  
04:52:09 11 substances like hydrocodone combination products, correct?

04:52:11 12 **A** Yes.

04:52:11 13 **Q** You don't disagree that those drugs that HBC  
04:52:16 14 distributed are subject to abuse and addiction?

04:52:20 15 **A** Sure.

04:52:21 16 **Q** In the answers that you were giving to Mr. Barnes as  
04:52:27 17 it related to the different security requirements, were you  
04:52:29 18 intending to imply that it was not important that HBC design  
04:52:33 19 and operate a system to detect suspicious orders?

04:52:36 20 **A** Absolutely not. The whole point of it was that when  
04:52:40 21 HBC designed their system, all of the different pieces of  
04:52:45 22 the security provision needed to be taken into  
04:52:50 23 consideration, including the class and type of medications  
04:52:57 24 or prescriptions that we would be distributing.

04:53:00 25 **Q** And you agree that all aspects of the security

04:53:01 1 requirement are important, correct?

04:53:02 2 **A** Sure, yes.

04:53:03 3 **Q** If you don't lock the door, that could be just as bad  
04:53:07 4 as not having a program that detects suspicious orders?

04:53:11 5 **A** A holistic system, keeping the security and the  
04:53:18 6 sanctity and the security of controlled substances in a  
04:53:22 7 closed system, is of utmost importance.

04:53:24 8 **Q** And that includes the aspect of that security  
04:53:26 9 requirement that requires HBC to design and operate a system  
04:53:29 10 to detect suspicious orders, correct?

04:53:31 11 **A** Yes.

04:53:32 12 **Q** You mentioned the pharmacy investigator, Rick Shaheen,  
04:53:36 13 correct?

04:53:37 14 **A** Yes.

04:53:37 15 **Q** I'm asking whether or not you're aware of him having  
04:53:40 16 any training or experience or education as it relates to  
04:53:43 17 HBC's duty under the Controlled Substances Act to design and  
04:53:50 18 operate a system to detect suspicious orders.

04:53:52 19 **A** That I do not know, no.

04:53:53 20 **Q** We agreed that HBC was under no obligation to utilize  
04:53:57 21 a threshold system in 2013, correct?

04:54:01 22 **A** Correct.

04:54:01 23 **Q** But HBC chose to do so, correct?

04:54:04 24 **A** As one level of control, yes.

04:54:07 25 **Q** Okay. And this was touched on a little bit earlier,

04:54:10 1 but I think with me you indicated that the original  
04:54:15 2 methodology was flawed and was a system that could produce  
04:54:20 3 false positives, correct?

04:54:22 4 **A** Certainly. When you do an average, yes, it's  
04:54:25 5 possible, yes.

04:54:27 6 **Q** And then you also were asked after lunch whether or  
04:54:30 7 not that same system could produce false negatives, and you  
04:54:37 8 agreed also that was a possibility, right?

04:54:38 9 **A** Possibly, yes.

04:54:39 10 **Q** I might get these numbers wrong, but I believe the  
04:54:42 11 example you gave to me when I was asking questions this  
04:54:44 12 morning was that you had some pharmacies that wrote 6,000  
04:54:47 13 scripts per month and you had some pharmacies that wrote 300  
04:54:50 14 scripts per month.

04:54:52 15 **A** If you mean dispense, yes, but that's not just  
04:54:56 16 controlled substances. That's total prescriptions. But  
04:54:58 17 yes.

04:54:59 18 **Q** Sure. So just like I think the example that you  
04:55:03 19 pointed out where maybe one of your higher-volume stores  
04:55:05 20 would consistently pop up on that threshold report, it's  
04:55:08 21 just as likely that you could have a lower-volume store  
04:55:12 22 doing two, three, four times what maybe it should be doing  
04:55:16 23 for its traffic, but that would not pop on the threshold  
04:55:19 24 report, correct?

04:55:20 25 **A** It's possible.

04:55:21 1 Q And the threshold system came around four years after  
04:55:26 2 you started distributing hydrocodone combination product,  
04:55:32 3 right?

04:55:32 4 A Sure.

04:55:37 5 (Video deposition concluded.)

04:55:37 6 MR. LANIER: Your Honor, that concludes our  
04:55:40 7 tender from both sides of the deposition of James Tsipakis  
04:55:44 8 and concludes the tender we've got fresh right now for  
04:55:48 9 today, but we have live witnesses tomorrow.

04:55:50 10 THE COURT: Okay. All right. There's no  
04:55:53 11 point starting a witness anyway for five or ten minutes.

04:55:57 12 So we will recess today. Usual admonitions. Don't  
04:56:02 13 watch, listen, view anything you might see or hear about  
04:56:06 14 this case in the media, do not discuss this case with  
04:56:11 15 anyone, and we'll pick up tomorrow at 9 a.m. with the next  
04:56:16 16 witness.

04:56:27 17 (The jury was excused at 4:56 p.m.)

04:56:46 18 THE COURT: Okay. Please be seated for a  
04:56:47 19 minute.

04:56:48 20 My recollection is that the parties were going to try  
04:56:55 21 and agree on the documents to be used with Martin. We did  
04:56:58 22 McCann, right, so it was just Martin that we were -- we have  
04:57:04 23 something, so I can stay current.

04:57:06 24 MS. FUMERTON: Your Honor, we've not done  
04:57:08 25 McCann.

04:57:09 1 MR. LANIER: Yeah, they've told me we did not  
04:57:11 2 do McCann.

04:57:12 3 THE COURT: Didn't do McCann or Martin?

04:57:15 4 MS. FLEMING: No.

04:57:16 5 THE COURT: Well, do we have anything?

04:57:18 6 MS. FLEMING: Yes, Your Honor. We have three  
04:57:19 7 for McCann and we have several for Martin.

04:57:21 8 THE COURT: Well, let's have them and see if  
04:57:23 9 defendants have any, and we'll go through these.

04:57:34 10 All right. Well, again, these are three dispensing  
04:57:39 11 summaries, 1006 summaries.

04:57:42 12 Did the parties go over these? It's P-26319, 62320,  
04:57:46 13 26322.

04:57:51 14 MS. FUMERTON: Your Honor, I spoke to  
04:57:52 15 Mr. Lanier this morning. We don't have an objection to the  
04:57:54 16 pages that were actually shown or used with the witness, but  
04:57:57 17 we do for the others. So the ones that were used were pages  
04:58:00 18 1, 3, and 4.

04:58:03 19 MR. LANIER: And, Your Honor, we agreed to  
04:58:06 20 make that change in the order.

04:58:08 21 THE COURT: Well, I'm sorry, there's three  
04:58:10 22 documents. Are you referring to one of them, Ms. Fumerton?

04:58:13 23 MS. FUMERTON: Yes, Your Honor. I apologize.  
04:58:15 24 I should have been more clear. I was referring to the  
04:58:16 25 Walmart one, which is P-26322.

04:58:21 1 THE COURT: All right. So that one will be  
04:58:23 2 pages --

04:58:26 3 MS. FUMERTON: 1, 3, and 4.

04:58:28 4 THE COURT: 1, 3, and 4. Okay.

04:58:31 5 And then the other two are coming -- no objection to  
04:58:34 6 the other two?

04:58:35 7 MR. DELINSKY: Your Honor, for CVS, which is  
04:58:40 8 P-26319, we have the same issue. We're okay with pages 1,  
04:58:44 9 3, and 4 as well.

04:58:45 10 MR. LANIER: Which we agreed to limit the  
04:58:49 11 tender to that, Your Honor.

04:58:49 12 THE COURT: So it's 1, 3, and 4 for risk  
04:58:52 13 factors.

04:58:52 14 What about the Giant Eagle, were there specific pages  
04:58:55 15 there, too?

04:58:56 16 MS. FIEBIG: Yes, we're in the same position.

04:58:57 17 For P-26320, we had spoken with plaintiffs only about  
04:59:01 18 the cover page and pages 3 and 4, which were used for  
04:59:05 19 Mr. McCann, but we were waiting to hear back.

04:59:07 20 MR. LANIER: And we limit that tender as well.

04:59:10 21 THE COURT: Okay. So it's the cover page, 3,  
04:59:12 22 and 4 only.

04:59:15 23 MR. FIEBIG: And, Your Honor, we would also  
04:59:16 24 ask that the title be corrected to reflect that it was just  
04:59:18 25 Giant Eagle dispensing and not HBC, but we have yet to hear

04:59:22 1 back from the plaintiffs on that score.

04:59:23 2 MR. LANIER: That's fine. We'll make that  
04:59:24 3 change, Your Honor.

04:59:25 4 THE COURT: All right. Fine. Okay.

04:59:32 5 All right. For Ms. Martin, these are the ones being  
04:59:35 6 offered. All right. 25959, the CV, resume, biography.

04:59:41 7 Any objection?

04:59:45 8 MR. SWANSON: No objection.

04:59:45 9 THE COURT: 25900, order item detail,  
04:59:49 10 suspicious order.

04:59:49 11 MR. SWANSON: No objection on that.

04:59:51 12 THE COURT: 19724, suspicious controlled drug  
04:59:55 13 orders for month of December 2006.

05:00:03 14 MR. SWANSON: No objection.

05:00:06 15 THE COURT: All right. 19720, suspicious  
05:00:09 16 controlled drug orders for month of December 2011?

05:00:12 17 MR. SWANSON: No objection.

05:00:13 18 THE COURT: All right. P-25879, Ms. Martin's  
05:00:19 19 handwritten notes.

05:00:20 20 MR. SWANSON: No objection.

05:00:21 21 THE COURT: 09065, DEA suspicious order  
05:00:26 22 reporting.

05:00:27 23 MR. SWANSON: No objection. Sorry.

05:00:30 24 THE COURT: 25660, revised suspicious order  
05:00:34 25 document.



05:00:35 1 MR. SWANSON: No objection.

05:00:36 2 THE COURT: Okay. 23857, e-mail about DEA  
05:00:40 3 business reason.

05:00:41 4 MR. SWANSON: No objection to that.

05:00:43 5 THE COURT: All right. 19827, November 8,  
05:00:46 6 2012 DEA meeting at NABP.

05:00:50 7 MR. SWANSON: No objection.

05:00:51 8 THE COURT: All right. 25761, just says  
05:00:54 9 "requirements."

05:00:54 10 MR. SWANSON: No objection on that.

05:00:57 11 THE COURT: Okay. Thank you. 25892, DEA at  
05:01:00 12 Jupiter Distribution Center.

05:01:02 13 MR. SWANSON: No objection on that.

05:01:03 14 THE COURT: And 00058, suspicious controlled  
05:01:06 15 drug orders with screenshots.

05:01:09 16 MR. SWANSON: No objection on that.

05:01:10 17 THE COURT: The last one is 08182, high  
05:01:13 18 quantity stores.

05:01:16 19 MR. SWANSON: No objection on that one.

05:01:18 20 THE COURT: Okay. Any defense documents with  
05:01:22 21 either of those two witnesses?

05:01:26 22 MR. SWANSON: Not for Walgreens.

05:01:28 23 THE COURT: Apparently none. Okay, fine. All  
05:01:30 24 right, good, then we're current.

05:01:31 25 So you're going to work on the ones for these two

05:01:35 1 witnesses, and we can deal with those tomorrow.

05:01:39 2 All right. Defendants filed a motion earlier today to  
05:01:44 3 preclude testimony from plaintiffs' fact witnesses about  
05:01:48 4 prescription opioids being a gateway to other drug use, and  
05:01:52 5 they refer to several witnesses.

05:01:53 6 I'll let the plaintiffs respond tomorrow, but to  
05:01:57 7 streamline things, are you planning to elicit such testimony  
05:02:02 8 with any of these witnesses and, if so, which ones?

05:02:09 9 MR. WEINBERGER: Your Honor, with respect to  
05:02:10 10 both of them, there will be testimony about personal  
05:02:15 11 observations that they made with respect to -- so  
05:02:21 12 Mr. Villanueva, who is in law enforcement, he will testify  
05:02:24 13 about personal observations that he's made about individuals  
05:02:27 14 who had the gateway effect from prescription opioids to --

05:02:34 15 THE COURT: Well, we're saying personal  
05:02:37 16 observations. What -- he's in law enforcement, all right?  
05:02:41 17 So --

05:02:42 18 MR. LANIER: He's basically a top narcotic  
05:02:46 19 guy. He does the investigations. He's finding the people  
05:02:52 20 who are doing it both with illegal drugs as well as drugs  
05:02:58 21 that have been diverted out of the pharmaceutical system.  
05:03:03 22 So he'll be testifying based on personal knowledge.

05:03:05 23 I don't plan on turning him into a big gateway expert.  
05:03:09 24 I haven't designated him as a gateway expert guy.

05:03:12 25 THE COURT: Well, neither one's an expert, so

05:03:16 1 they can't give expert --

05:03:18 2 MR. LANIER: He meets the requirements of  
05:03:19 3 having more than common person knowledge on the areas where  
05:03:21 4 he's testifying, but he's testifying as a cop. That's his  
05:03:24 5 job. That's what he does.

05:03:26 6 MR. SWANSON: Your Honor, it's Brian Swanson  
05:03:29 7 for Walgreens.

05:03:29 8 You can't call it personal experience just to get  
05:03:32 9 hearsay testimony in about what unidentified victims and  
05:03:35 10 victims' families have said about how they began using  
05:03:40 11 opioids. You can't just say, well, it's personal experience  
05:03:42 12 because somebody told me. And that's the hearsay problem  
05:03:45 13 that we have here.

05:03:46 14 MR. LANIER: Your Honor, I don't plan on  
05:03:48 15 eliciting that testimony. If something happens overnight  
05:03:50 16 and I change my mind, I'll certainly approach the bench  
05:03:53 17 before I do so.

05:03:55 18 THE COURT: All right.

05:03:56 19 MR. SWANSON: And can the witness be  
05:03:57 20 instructed not to volunteer as well, Mr. Lanier?

05:03:59 21 MR. LANIER: Absolutely.

05:04:00 22 THE COURT: All right. So that will take care  
05:04:07 23 of Mr. Villanueva.

05:04:13 24 What about Ms. Caraway, who's on the ADAMHS Board and  
05:04:18 25 Ms. Fraser, who is I think also on the ADAMHS Board.

05:04:21 1 MR. LANIER: Your Honor, they won't be  
05:04:22 2 testifying until the end of the week, and I'm frankly not  
05:04:24 3 sure at this point in time, so I'd ask for at least tonight  
05:04:27 4 to look at it.

05:04:28 5 THE COURT: All right.

05:04:28 6 MR. LANIER: But Mr. Villanueva is tomorrow  
05:04:31 7 morning first thing.

05:04:32 8 THE COURT: All right. Well, again, everyone  
05:04:34 9 knows the rule on hearsay, so -- and we -- you know, we've  
05:04:38 10 had expert reports and I think we may have another expert  
05:04:41 11 report, I don't know, about this. And so --

05:04:48 12 MR. LANIER: Yeah, they will not be offering  
05:04:49 13 hearsay, Your Honor, at least not through my direct  
05:04:52 14 examination.

05:04:53 15 THE COURT: Okay.

05:04:55 16 MR. SWANSON: Your Honor, can I just raise one  
05:04:58 17 more issue with Mr. Villanueva, which actually may not be an  
05:05:02 18 issue. But in reviewing his deposition, he volunteered a  
05:05:06 19 story about an acquaintance that he had who died of an  
05:05:11 20 opioid overdose, and we had eliminated in Track One dealing  
05:05:16 21 with those sorts of personal stories and anecdotes.

05:05:20 22 I'm not sure if you plan on eliciting that, but if you  
05:05:23 23 do, we'd like to be heard on that.

05:05:26 24 THE COURT: All right. Well, I think we  
05:05:30 25 should -- sadly, every one of us and I'm sure every witness

05:05:34 1 could recount something, but I don't think it's --

05:05:38 2 MR. LANIER: This may be a little different,  
05:05:39 3 Your Honor, because he actually investigated it. He was the  
05:05:42 4 investigating officer on it.

05:05:43 5 THE COURT: Well, I understand that, but I  
05:05:47 6 don't see how that, recounting one drug investigation, how  
05:05:53 7 that's relevant to this case, unless it was tied to the  
05:06:03 8 prescriptions that came from one of defendants in Lake or  
05:06:07 9 Trumbull County.

05:06:10 10 MR. LANIER: We believe it is, Your Honor.

05:06:11 11 THE COURT: Well, has that been, you know,  
05:06:14 12 identified to -- I mean, if that's the case, it may be  
05:06:16 13 relevant. But I don't know the facts, and I assume the  
05:06:22 14 defendants know about it because it was covered in his  
05:06:24 15 deposition.

05:06:25 16 MR. SWANSON: All we know he said in his  
05:06:27 17 deposition, "This is very real, I had an acquaintance from  
05:06:29 18 high school who was a star football player," I think it was,  
05:06:34 19 and he says "he died of an opioid overdose."

05:06:37 20 I've looked at the press and I can't find that in the  
05:06:39 21 press, so we don't have the information --

05:06:42 22 THE COURT: It's a little late if the  
05:06:44 23 plaintiffs are now going to try to elicit testimony from  
05:06:47 24 this witness about a specific investigation he conducted of  
05:06:52 25 one of the defendants' stores in Lake or Trumbull County and

05:06:59 1 tie it to somehow that -- was there a prosecution of one of  
05:07:06 2 the pharmacies here?

05:07:07 3 MR. LANIER: No, Your Honor. He can't  
05:07:08 4 prosecute the pharmacies. What we've got from this  
05:07:11 5 gentleman -- I mean, they took his deposition. They're  
05:07:13 6 entitled to ask him anything that they wanted. They're  
05:07:15 7 entitled -- no, they're obligated under the law to do their  
05:07:19 8 discovery.

05:07:19 9 We're not entitled to say, hey, you should have asked  
05:07:22 10 him this, that, and the other, because these are other facts  
05:07:25 11 he's got. They took his deposition. We'll bring him in  
05:07:30 12 and --

05:07:30 13 THE COURT: Well, look, before you elicit any  
05:07:32 14 testimony like that, I want to know about it in advance. If  
05:07:38 15 you're bringing out a specific -- we ought to know about it  
05:07:41 16 right now, if there was an investigation or prosecution of  
05:07:43 17 one of the stores --

05:07:44 18 MR. LANIER: No, there was not of the store.  
05:07:45 19 They can't prosecute the store. They can only -- they can  
05:07:48 20 only prosecute an individual.

05:07:50 21 So, for example, these records --

05:07:52 22 THE COURT: They can prosecute a pharmacy -- I  
05:07:55 23 meant a pharmacist, okay?

05:07:56 24 MR. LANIER: These records have been produced  
05:07:57 25 to the defendants. They've got the prosecutions, they've

05:07:59 1 got his investigation file. He's an investigating officer.

05:08:03 2 There was one of the gentlemen that he will testify  
05:08:05 3 about tomorrow morning, that he investigated who was  
05:08:10 4 diverting drugs, who went to stores from a number of these  
05:08:15 5 defendants to buy his drugs.

05:08:16 6 THE COURT: You say he investigated someone  
05:08:18 7 who was diverting drugs. This is a -- someone who came in  
05:08:24 8 with prescriptions?

05:08:26 9 MR. LANIER: Yes, Your Honor, who went to each  
05:08:29 10 of these stores with Overholt's and Franklin. It's directly  
05:08:32 11 dead on to what they've been saying. We don't have evidence  
05:08:34 12 of the whole case, but it's in the files that have been  
05:08:37 13 produced.

05:08:37 14 THE COURT: Was there a prosecution of this  
05:08:39 15 person?

05:08:39 16 MR. LANIER: Yes, there was, Your Honor.

05:08:40 17 THE COURT: Was he convicted?

05:08:42 18 MR. LANIER: I don't know.

05:08:44 19 THE COURT: Well, when was the prosecution --  
05:08:46 20 I mean, if it was found not guilty, then I think it's not --  
05:08:49 21 then it's more prejudicial than probative. If he was  
05:08:51 22 convicted, well, then maybe it's relevant.

05:08:55 23 MR. LANIER: It's my understanding the  
05:08:58 24 gentleman may have died in the process of all of this. I'm  
05:09:01 25 not sure.

05:09:01 1 THE COURT: Which gentleman, the --

05:09:04 2 MS. SULLIVAN: Your Honor, I know what they're  
05:09:05 3 trying to do here, and they should come clean about it.

05:09:09 4 At the deposition he was asked about -- he was asked  
05:09:10 5 about an incident where somebody stole from Giant Eagle.

05:09:15 6 MR. LANIER: No, that's not what we're talking  
05:09:17 7 about.

05:09:17 8 THE COURT: Look, look, it's late. Before you  
05:09:20 9 get anywhere near this, I want to know exactly what you're  
05:09:27 10 planning to do or where you're going. I don't want you  
05:09:30 11 getting anywhere near it until I know what it is and I've  
05:09:32 12 heard from the defendants.

05:09:33 13 MR. LANIER: I'll show you first thing in the  
05:09:35 14 morning or whenever you want, because that's the whole  
05:09:37 15 reason we're calling him, is to put him on the stand to ask  
05:09:39 16 these questions.

05:09:40 17 There's a gentleman named Douglas Winland who in 2009  
05:09:44 18 was under investigation for a criminal situation. They ran  
05:09:49 19 his mugshot and ran his record. They found the OARRS  
05:09:54 20 write-ups from the defendants. They have found him filling  
05:09:58 21 prescriptions with all of the pharmacies from all of these  
05:10:02 22 defendants, ultimately far beyond what any person could be  
05:10:07 23 using in his situation. He had doctor shopped, he had  
05:10:10 24 pharmacy shopped. We've got the investigation file. We've  
05:10:14 25 produced it to the defendants.



05:10:16 1 It sounds to me like they hadn't read it. I can't do  
05:10:19 2 anything about that. And now they'll have the whole night  
05:10:21 3 to prepare for the cross, so they get that.

05:10:25 4 THE COURT: But again, this is all hearsay  
05:10:27 5 unless someone was prosecuted.

05:10:30 6 MR. LANIER: No, Your Honor, he investigated  
05:10:31 7 it. He's got the OARRS report that shows where the  
05:10:34 8 prescriptions were filled as part of his investigation.  
05:10:38 9 He's --

05:10:38 10 THE COURT: Well, I wanted -- was this Winland  
05:10:42 11 prosecuted? Was a pharmacist prosecuted?

05:10:44 12 MR. LANIER: The pharmacists were not  
05:10:45 13 prosecuted because you can't prosecute a pharmacist like  
05:10:47 14 this. You can just report them to the Board.

05:10:50 15 MR. SWANSON: Of course you can prosecute a  
05:10:52 16 pharmacist.

05:10:52 17 THE COURT: You absolutely can prosecute a  
05:10:54 18 pharmacist.

05:10:55 19 MR. SWANSON: And by the way, Your Honor --

05:10:57 20 THE COURT: Were they reported to the Board  
05:10:58 21 and were they disciplined? I mean, I don't know -- at the  
05:11:03 22 moment I'm not letting any of this in. If I can know  
05:11:06 23 specifically what it is and how it's relevant I'll consider  
05:11:08 24 it, but at the moment it's out.

05:11:11 25 MR. SWANSON: Your Honor, just to be clear,

05:11:12 1 this whole discussion started over this instant where he was  
05:11:14 2 going to tell about a personal story about a friend of his,  
05:11:18 3 and it sort of got segued.

05:11:20 4 MR. LANIER: I'm not doing the personal story  
05:11:22 5 right now. But as His Honor said, he might know what the  
05:11:24 6 fellow was going to say about the whole issue, so I'm being  
05:11:27 7 candid in disclosing to the --

05:11:28 8 THE COURT: At the moment I'm not allowing any  
05:11:30 9 of it.

05:11:31 10 MR. LANIER: Then we have no witness tomorrow  
05:11:32 11 with him, but we'll need to put him on to secure an appeal,  
05:11:36 12 so we'll put him on for a bill of exceptions.

05:11:39 13 MR. SWANSON: Your Honor, this is a man who's  
05:11:42 14 testified under oath that he has no information about the  
05:11:45 15 specific pharmacies doing anything wrong in this case.  
05:11:48 16 That's his under oath testimony.

05:11:49 17 MR. LANIER: He will testify to the  
05:11:51 18 prescriptions. He can't give the testimony that they broke  
05:11:55 19 the law. That would be an illegal opinion on his part. I'm  
05:11:59 20 not offering him as an expert on that. I'm offering him as  
05:12:02 21 a fact witness who did an investigation. I don't know --

05:12:05 22 THE COURT: I don't know what he -- hold it,  
05:12:07 23 hold it. I don't know what he investigated, I don't know  
05:12:08 24 what the result of the investigation is and how it's  
05:12:11 25 relevant here.

05:12:12 1 MR. LANIER: Well, it would be like if I had a  
05:12:14 2 car wreck case I was trying and I pulled the police officer  
05:12:16 3 in and said, Did you investigate who ran the red light?

05:12:19 4 Yes. Who did you talk to? What did you do?

05:12:21 5 THE COURT: Well, that's hearsay.

05:12:22 6 MR. LANIER: Not if he's an investigating  
05:12:24 7 officer.

05:12:24 8 MR. SWANSON: Sure it is.

05:12:25 9 THE COURT: Yeah, it still is. He can't  
05:12:27 10 testify to who ran the red light.

05:12:29 11 MR. LANIER: He can absolutely testify about  
05:12:31 12 his investigation. In this situation --

05:12:33 13 THE COURT: Well, but only if his  
05:12:35 14 investigation is somehow an issue in the case.

05:12:38 15 MR. LANIER: Well, Your Honor, it's  
05:12:40 16 absolutely -- he can testify to the OARRS report, he pulls  
05:12:44 17 the OARRS report --

05:12:45 18 THE COURT: I mean, unless you -- it might be  
05:12:47 19 relevant if he -- if he did an investigation and he found  
05:12:52 20 there was wrongdoing or even grossly negligent behavior at a  
05:12:59 21 pharmacist and he then reported it to the pharmacist and  
05:13:01 22 then they didn't do anything, it might be relevant for  
05:13:06 23 notice. But I don't know if we have that.

05:13:07 24 MR. LANIER: All right. So here's the  
05:13:09 25 situation where this leaves me.

05:13:10 1 The entire defense of this case is you can't show  
05:13:12 2 anything these pharmacies did wrong. I can't call their  
05:13:16 3 witnesses --

05:13:16 4 THE COURT: No, no, that's not their -- their  
05:13:19 5 defense is they didn't do anything wrong, not that you can't  
05:13:21 6 show it.

05:13:21 7 MR. LANIER: Well, there's no evidence they  
05:13:24 8 did anything wrong, we'll say it that way. So I've got the  
05:13:27 9 evidence, but their witnesses say "We don't recognize that  
05:13:29 10 evidence, I don't know it," so I can't put it on through  
05:13:32 11 their witnesses.

05:13:32 12 So I've got the investigating officer who goes out and  
05:13:35 13 does the investigation and gathers the evidence together and  
05:13:37 14 has that evidence, but I can't put it on through him because  
05:13:40 15 it's not relevant.

05:13:43 16 THE COURT: No, hold.

05:13:45 17 MR. LANIER: And there's evidence of  
05:13:46 18 diversion.

05:13:47 19 THE COURT: Hold it. Wait a minute. If you  
05:13:50 20 can elicit from this man that he conducted an investigation  
05:13:54 21 of one or more of the pharmacists in either of these  
05:13:58 22 counties, all right, and then he presented it to them and  
05:14:02 23 they didn't do anything, all right, that I think is  
05:14:05 24 relevant.

05:14:07 25 MR. LANIER: Well, that's *ex post facto*.

05:14:10 1 That's after the diversion. That means they didn't do  
05:14:14 2 anything after the diversion. I've got to show that the  
05:14:16 3 diversion happened. And this gentleman, for example --

05:14:18 4 THE COURT: How is he going --

05:14:21 5 MR. LANIER: The OARRS report is not hearsay,  
05:14:22 6 that's a Government document. And so he's got the OARRS  
05:14:25 7 report, and he runs the OARRS report and he sees that this  
05:14:28 8 fellow takes two prescriptions at one time to a Walgreens  
05:14:32 9 store for two different OxyContin prescriptions, and they  
05:14:34 10 fill them both. And that's five days after he's gone  
05:14:38 11 somewhere else and they filled one. And five days after  
05:14:40 12 he's gone somewhere else and they filled one. Two days  
05:14:42 13 before he goes somewhere else and he fills one. And he's  
05:14:45 14 got the OARRS report, and he's certainly able and  
05:14:48 15 competent --

05:14:49 16 THE COURT: Well, what did he do -- who was --  
05:14:52 17 was anyone charged, was anyone prosecuted?

05:14:54 18 MR. LANIER: I have no idea because that's all  
05:14:57 19 after the diversion. I can't put him on to prove that.  
05:15:01 20 What I can put him on to do is to prove the diversion that  
05:15:05 21 happened, and that's what I've got. And so -- what I've got  
05:15:14 22 is --

05:15:15 23 THE COURT: What you actually -- you're  
05:15:16 24 putting him on to put in the OARRS report.

05:15:19 25 MR. LANIER: I'm putting him on to put in the

05:15:21 1 OARRS report and explain who the stores are, and explain why  
05:15:24 2 he pulled it, and explain what the investigation would be,  
05:15:26 3 and explain how anybody could have figured this out if they  
05:15:29 4 had run the OARRS report or whatever it may have been. But,  
05:15:32 5 yeah, he's got to -- he's there to explain the investigation  
05:15:36 6 that says, here's a fellow, here's his mugshot, this is the  
05:15:40 7 fellow who went here and did this, and went here and did  
05:15:43 8 this, and went here and did this; and it's written up in my  
05:15:47 9 investigation, and I personally investigated it and I signed  
05:15:49 10 off on it, and this is a Government document that I've  
05:15:52 11 signed off on it with, so it's not hearsay.

05:15:54 12 THE COURT: Well, what's his Government  
05:15:56 13 document?

05:15:57 14 MR. LANIER: His investigation file, which has  
05:15:59 15 been produced to the defendants years ago. Not years ago,  
05:16:03 16 some time ago.

05:16:04 17 THE COURT: What is his position, Trumbull  
05:16:09 18 County Sheriff?

05:16:09 19 MR. LANIER: He's the commander of TAAG, which  
05:16:13 20 is the Trumbull Ashtabula Action Group.

05:16:20 21 MR. SWANSON: Your Honor, these are the kind  
05:16:22 22 of allegations that haven't even passed muster to get into  
05:16:25 23 evidence. It's absolutely allegations that are unproven and  
05:16:29 24 apparently never charged or even provided notice to the  
05:16:31 25 pharmacies.

05:16:31 1 What this witness has said under oath, Your Honor, and  
05:16:34 2 I'll read from his deposition: "Do you have knowledge of  
05:16:37 3 any specific wrongful act by CVS or one of the other chain  
05:16:41 4 pharmacies in Trumbull County concerning the dispensing of  
05:16:44 5 opioids?

05:16:44 6 Answer: "I do not."

05:16:46 7 So we were entitled I think to rely on that answer  
05:16:50 8 before -- you know, having this sprung on us.

05:16:53 9 THE COURT: That sounds -- I mean --

05:16:56 10 MR. LANIER: He cannot testify that CVS did  
05:16:59 11 something wrong. He cannot testify that --

05:17:01 12 THE COURT: Well, that's the whole point of  
05:17:03 13 your putting him on, that they did do something wrong.

05:17:05 14 MR. LANIER: No, Your Honor, my point is not  
05:17:07 15 putting him on to allow him to be a legal expert to say they  
05:17:11 16 broke the law. He can't do that.

05:17:12 17 THE COURT: Well, what are you putting him on  
05:17:14 18 to put in?

05:17:14 19 MR. LANIER: I'm putting him on to show the  
05:17:16 20 facts, the underlying facts that would allow the jury to  
05:17:18 21 conclude they did something wrong.

05:17:19 22 THE COURT: Hold it. What was the under --  
05:17:22 23 the only underlying facts I've heard is that there's an  
05:17:25 24 OARRS report.

05:17:27 25 MR. LANIER: No, there's a gentleman named

05:17:29 1 Douglas Winland who was under investigation, and in the  
05:17:34 2 process of investigating they went and took statements from  
05:17:38 3 doctors, they went and took statements from not just the  
05:17:45 4 physicians, they got the OARRS statement, they went and ran  
05:17:48 5 the prescriptions and checked, and he's got all of that data  
05:17:52 6 in his investigatory --

05:17:54 7 THE COURT: He's going to come in and say  
05:17:57 8 based on this I thought -- I believed the pharmacist did  
05:18:00 9 something wrong?

05:18:01 10 MR. LANIER: He can't say that.

05:18:02 11 MR. WEINBERGER: No, but he is going to say  
05:18:04 12 that this is a gentleman who doctor shopped, and he  
05:18:06 13 should --

05:18:07 14 THE COURT: Well, that the pharmacist should  
05:18:11 15 have picked it up, that's the whole point.

05:18:13 16 MR. DELINSKY: Your Honor, one complexity to  
05:18:15 17 this is that in 2009 when this occurred, OARRS wasn't even  
05:18:17 18 available to pharmacists. It was only available to law  
05:18:19 19 enforcement.

05:18:21 20 MR. LANIER: We're in a case, Your Honor,  
05:18:22 21 where the other side --

05:18:23 22 THE COURT: Again, I'm not happy -- you all  
05:18:27 23 have known about this for months and months, both sides. I  
05:18:30 24 mean, the plaintiffs were going to plan to do this and the  
05:18:34 25 defendants could have -- you know, you could have filed this



05:18:37 1 motion a long time ago. All right?

05:18:40 2 MR. WEINBERGER: Your Honor, one of the things  
05:18:43 3 that they did extensive discovery on was subpoenaing law  
05:18:48 4 enforcement files of both of these counties, because they  
05:18:51 5 wanted to see what -- you know, what evidence did we have  
05:18:55 6 that diversion was investigated within the counties.

05:19:00 7 Well, this is a perfect example of the investigation  
05:19:04 8 of diversion.

05:19:05 9 THE COURT: Well, if the defendants are saying  
05:19:07 10 that no harm, no foul because the counties don't care about  
05:19:10 11 it, then the fact that he -- that he's a county employee and  
05:19:15 12 he does investigate, that's relevant. But I haven't  
05:19:16 13 heard --

05:19:17 14 MR. WEINBERGER: That's certainly one of their  
05:19:18 15 defenses and has been for a long time.

05:19:21 16 MR. LANIER: He was charged and sentenced with  
05:19:24 17 deception to obtain dangerous drugs.

05:19:26 18 THE COURT: Wait, who was charged, Winland?

05:19:28 19 MR. LANIER: Winland was charged and sentenced  
05:19:30 20 for deception to obtain dangerous drugs. And this is in a  
05:19:35 21 case where the other side has used repeatedly nothing but  
05:19:38 22 hearsay to say that Overholt's and Franklin are the bad  
05:19:43 23 pharmacies that are continually diverting and giving out  
05:19:46 24 prescriptions with an entire hearsay dissertation from  
05:19:49 25 Mr. Joyce, who said that, yeah, we couldn't sell -- we

05:19:51 1 didn't buy the Overholt's Pharmacy because --

05:19:54 2 THE COURT: And which pharmacies did Winland  
05:19:57 3 get his drugs?

05:19:58 4 MR. LANIER: Overholt's, Franklin, Walgreens,  
05:20:03 5 CVS, and Giant Eagle and Walmart.

05:20:08 6 And for them to make the accusation that -- I don't  
05:20:10 7 know how they're going to prove that Overholt's was  
05:20:15 8 miswriting prescriptions, but surely they've got proof or  
05:20:18 9 they wouldn't be saying it all the time.

05:20:20 10 But I've got proof here that they did.

05:20:24 11 THE COURT: Well, the problem is the man  
05:20:30 12 apparently testified he's got no evidence that any of those  
05:20:34 13 four defendants did anything wrong in Trumbull County, and  
05:20:39 14 your purpose of putting him on is just the opposite, to show  
05:20:43 15 that they did something wrong with filling prescriptions of  
05:20:49 16 this guy Winland who doctor shopped and that they should  
05:20:54 17 have been onto him at some point.

05:20:55 18 MR. LANIER: No, Your Honor. Your Honor, I  
05:21:00 19 cannot in my mind call a law enforcement witness to say  
05:21:02 20 someone else broke the law. He can't do that. That calls  
05:21:05 21 for a legal conclusion.

05:21:06 22 THE COURT: Well, did something wrong, had a  
05:21:09 23 poor system, had an inadequate system.

05:21:12 24 MR. LANIER: And once I do that, he's become  
05:21:13 25 an expert.

05:21:14 1 THE COURT: Well, then exactly what --

05:21:15 2 MR. LANIER: So all he's going to do is  
05:21:18 3 testify to his investigation. I investigated this fellow,  
05:21:23 4 we charged him, he got sentenced. Here's the reason I  
05:21:27 5 investigated him, here's what my investigation showed.

05:21:31 6 They've had this. They cross-examined I think on part  
05:21:35 7 of this --

05:21:37 8 MR. SWANSON: Your Honor, we didn't ask if  
05:21:39 9 he'd broken the law. We asked if he had any knowledge of  
05:21:42 10 any specific wrongful act, and I think we're entitled to  
05:21:46 11 rely on his testimony. And there would be no reason for us  
05:21:48 12 to file a motion to preclude something when he said "I don't  
05:21:52 13 have any knowledge of any wrongful acts."

05:21:55 14 MR. LANIER: And he will not say that he can  
05:21:56 15 testify that it was wrong or right for them to fill the  
05:21:58 16 prescriptions. That's not what he's here to do.

05:22:00 17 All he's going to do is testify to the facts that  
05:22:02 18 here's a person who has gone to the pharmacies that they  
05:22:05 19 frequently have said repeatedly in this trial are the  
05:22:09 20 bad-acting pharmacies in the county. We've got a fellow who  
05:22:11 21 went to them, but he filled just as many prescriptions at  
05:22:15 22 Walgreens, if not more, than he did at some of these other  
05:22:18 23 pharmacies.

05:22:19 24 And he was very good, and how else do I put that  
05:22:22 25 evidence in?

05:22:23 1 THE COURT: Well, all right, it may be  
05:22:24 2 relevant -- that may be relevant that this one person who  
05:22:27 3 went to Overholt's and Franklin, who the defendants are  
05:22:30 4 going to try and pin all the blame on, also got  
05:22:33 5 prescriptions from the other four pharmacies. I may let  
05:22:35 6 that in, okay?

05:22:37 7 MR. LANIER: Thank you.

05:22:39 8 THE COURT: And I can --

05:22:40 9 MR. LANIER: That's why I'm calling him.

05:22:43 10 THE COURT: I may let that in, okay, that  
05:22:45 11 here's someone who was prosecuted, who was charged and he  
05:22:49 12 was sentenced, and he shopped at all six; the Overholt's and  
05:22:57 13 Franklin, and the other four.

05:23:01 14 MR. SWANSON: Your Honor, here is the issue.  
05:23:02 15 The question isn't whether he can testify about us doing  
05:23:04 16 something wrong or breaking the law, he's asking if he had  
05:23:06 17 any knowledge. And we were entitled to have his knowledge  
05:23:08 18 if he had it.

05:23:10 19 MR. LANIER: That you did something wrong.

05:23:12 20 MR. SWANSON: Did you have any knowledge of  
05:23:13 21 wrongful conduct, so if he's going to take the stand and say  
05:23:16 22 I don't consider that to be wrongful conduct, then he won't  
05:23:19 23 be inconsistent with his testimony perhaps.

05:23:20 24 MR. LANIER: I don't think he's going to  
05:23:21 25 comment on whether it's wrongful or not. I don't think he's

05:23:24 1 in a position to.

05:23:25 2 THE COURT: I'm not going to let him comment  
05:23:27 3 on that. It's simply -- it's simply pointed that here's an  
05:23:31 4 example of an individual who was investigated, charged,  
05:23:37 5 convicted, and he went to all -- you know, he went to the  
05:23:40 6 two places that have been identified and essentially  
05:23:46 7 conceded as being pill mills, but he also went to the  
05:23:49 8 defendants, all right?

05:23:50 9 MR. LANIER: That's it. Thank you.

05:23:51 10 THE COURT: So I think that's -- that limited  
05:23:55 11 testimony is relevant.

05:23:57 12 MR. SWANSON: Was he convicted or did he  
05:23:59 13 plead?

05:23:59 14 THE COURT: Doesn't matter. He's convicted.  
05:24:00 15 If he's sentenced, he's convicted. He can't be sentenced if  
05:24:04 16 you're not convicted, Mr. Swanson.

05:24:06 17 MR. SWANSON: I understand, but he can plead  
05:24:08 18 and be sentenced.

05:24:09 19 THE COURT: Well, sure, but it doesn't -- it's  
05:24:13 20 legally irrelevant whether he went to trial and was  
05:24:15 21 convicted or he entered a plea. The judge accepted his --  
05:24:20 22 there was a conviction and sentence, so it's like I have  
05:24:22 23 lots of criminal cases, some people go to trial, most plead,  
05:24:25 24 but the conviction is they're convicted of X crime and  
05:24:30 25 they're sentenced.

05:24:33 1 So I think just that limited fact, but it's going to  
05:24:35 2 be very short testimony.

05:24:38 3 MS. SULLIVAN: Your Honor, Giant Eagle joins  
05:24:40 4 in the objection. It's sandbagging, Your Honor, it's  
05:24:43 5 inappropriate.

05:24:45 6 MS. FUMERTON: Walmart joins in the objections  
05:24:47 7 as well.

05:24:48 8 MR. DELINSKY: The same for CVS.

05:24:49 9 THE COURT: All right. Well, you can -- you  
05:24:52 10 now know what he's -- you know, it's going to be very  
05:24:54 11 limited, and apparently this was all gone into in the  
05:24:57 12 deposition. This guy -- was there testimony about  
05:25:01 13 investigation of Douglas Windham or Winland?

05:25:05 14 MS. SULLIVAN: No, Your Honor, he said  
05:25:06 15 unequivocally nobody here did anything wrong.

05:25:10 16 MR. SWANSON: If he said this one doctor  
05:25:11 17 shopped we could have followed up, but what he said in his  
05:25:15 18 deposition is that when it came to doctor shopping, he  
05:25:17 19 handed it over to the BOP because they had the resources  
05:25:20 20 that his group didn't have. So not only did he say --

05:25:24 21 THE COURT: Hold it. There was no  
05:25:26 22 testimony -- no question by anyone in his deposition about  
05:25:28 23 Douglas Winland?

05:25:31 24 MR. GALLUCCI: Your Honor, Frank Gallucci for  
05:25:33 25 the plaintiffs.

05:25:34 1           There was no questioning specific to the case because  
05:25:36 2           of Winland.

05:25:39 3           THE COURT:   Had the plaintiffs somehow turned  
05:25:41 4           over all these documents about Winland?

05:25:44 5           MR. GALLUCCI:   We have produced all documents  
05:25:45 6           in the regular course of discovery that we intend to use  
05:25:48 7           with the witness.

05:25:49 8           MR. SWANSON:   Your Honor, if this witness had  
05:25:51 9           answered the question --

05:25:52 10          THE COURT:   Wait.   When -- so when --  
05:25:56 11          Mr. Gallucci, when did you turn over the documents with  
05:26:00 12          Winland to the defendants?

05:26:01 13          MR. GALLUCCI:   One moment, Your Honor.   I can  
05:26:03 14          tell you when, but it was produced with the --

05:26:05 15          MR. WEINBERGER:   Prior to his deposition.

05:26:07 16          MR. GALLUCCI:   Correct, prior to his  
05:26:08 17          deposition, prior to the discovery cutoff.

05:26:12 18          MR. SWANSON:   But here's the thing, Your  
05:26:13 19          Honor --

05:26:14 20          THE COURT:   Well, have you produced the  
05:26:15 21          documents --

05:26:16 22          MR. WEINBERGER:   It's been on our exhibit  
05:26:17 23          list.

05:26:18 24          THE COURT:   All right.   Well, there --

05:26:19 25          MR. SWANSON:   But, Your Honor, here's the

05:26:21 1 thing. If he had answered the question when he was asked  
05:26:24 2 "Yes, I am aware of conduct that I consider to be wrongful  
05:26:26 3 because I investigated it or prosecuted it" --

05:26:28 4 MR. WEINBERGER: He's not testifying that the  
05:26:30 5 pharmacies did anything wrong.

05:26:31 6 THE COURT: You can cross-examine on him and  
05:26:32 7 if he says, well, you know, I have no idea if this was right  
05:26:35 8 or wrong, I just know that the guy shopped at all six --  
05:26:39 9 these six pharmacies, fine. That's it, that's all he's --  
05:26:43 10 that's all he's saying.

05:26:43 11 MR. LANIER: That's it.

05:26:44 12 THE COURT: That here's someone who was  
05:26:46 13 investigated for doctor shopping, and they want to just put  
05:26:49 14 in the fact that people don't just go to Overholt's and  
05:26:55 15 Franklin, all right? They go to all of them. I think it's  
05:27:00 16 relevant. I think that's relevant, okay, but it's pretty  
05:27:07 17 limited, so he's not going to be on very long.

05:27:10 18 So that doesn't sound like very long, so how long is  
05:27:13 19 Tasha Polster's testimony.

05:27:15 20 MR. LANIER: Tasha Polster will be a good bit  
05:27:18 21 of tomorrow, I expect.

05:27:19 22 THE COURT: I don't want to just run out of  
05:27:21 23 witnesses.

05:27:21 24 MR. LANIER: I can't see us running out of  
05:27:23 25 witnesses. If we do, we'll play a deposition.



05:27:25 1 THE COURT: All right. Well, because I don't  
05:27:27 2 think Officer Villanueva is going to be very long.

05:27:30 3 MR. LANIER: My hope is to get him on and off  
05:27:33 4 the stand within an hour to an hour and 15 minutes for both  
05:27:36 5 sides. He is a fact witness on a number of different  
05:27:41 6 aspects of the county as well.

05:27:42 7 THE COURT: It sounds like he's quick, so  
05:27:45 8 Ms. Polster should be available.

05:27:45 9 I don't know her. She may -- to my knowledge, she's  
05:27:47 10 not related, but most of the Polsters are related, so I'm  
05:27:52 11 going to --

05:27:56 12 MR. STOFFELMAYR: We have asked her, but she  
05:27:58 13 said not to her knowledge either.

05:28:02 14 THE COURT: She's a witness. Whether she's  
05:28:04 15 related or not, she has relevant testimony; but I'll just  
05:28:07 16 tell the jury if she's related, it's a very distant one, and  
05:28:10 17 the two of us aren't acquainted.

05:28:13 18 Okay. All right. We'll see everyone tomorrow then.

05:28:16 19 - - - - -

05:28:16 20 (Proceedings adjourned at 5:28 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

/s/Lance A. Boardman                      October 18, 2021

Lance A. Boardman                      Date

Official Court Reporter